

STATE OF MAHARASHTRA
v.
PUBLIC CONCERN FOR GOVERNANCE TRUST AND ORS.

JANUARY 4, 2007

[Dr. AR. LAKSHMANAN AND ALTAMAS KABIR, JJ.]

Strictures :

Expunction of adverse remarks—Chief Minister endorsing ‘please put up’ on application addressed to him for allotment of plots by Societies—Applications forwarded to the Authority for processing—Allotment of land to the Societies—Unwarranted observations made against Chief Minister by High Court—Appeal by State for expunging of remarks—Held : Notation ‘please put up’ by Chief Minister merely means that the Department should process the applications in accordance with the procedure —It does not mean approval—High Court erred in making observations regarding notations made in files on their own reading and interpretation of the files—Chief Minister not made party to the case nor called for explanation—Also, appeal by State maintainable since observations and strictures made by High Court would affect working and functioning of office of Chief Minister—Thus, strictures/observations/remarks made by High Court not warranted and are expunged—Constitution of India, 1950—Articles 21, 226 and 132.

Expunction of remarks—Passing of comments/observations/strictures against an individual not party to the proceedings nor direction made to be party and without giving him hearing—Held : Such act amounts to gross violation of principles of natural justice—It would have wide ramifications and adverse impact on the career of the individual—He has right to have his reputation—Thus, such comments/observations structures made not warranted and are expunged—Constitution of India, 1950—Articles 21, 226 and 132.

With regard to Civil Appeal No. 14 of 2007, CIDCO-Corporation grants plots in Navi Mumbai for construction and development under the Maharashtra Regional and Town Planning Act, 1966 read with prevalent development control regulations for Navi Mumbai. Respondent Nos. 5 to 10-Societies filed applications for allotment of residential plot for housing

A society to the then Chief Minister of Maharashtra who was also the Minister for Urban Development. It was stated that CIDCO may allot the plot for residential purposes as per the prevailing rules. The then Chief Minister made noting on the five applications “please put up”. The applications were forwarded to the Authority—CIDCO for processing and they added their endorsements reading please process early or words to that effect. Chief Minister did not make any other noting or endorsement on the said files. The sixth application though addressed to the Chief Minister, but no endorsement was made by the Chief Minister on the said file. At no stage the file reached the office of the Chief Minister. CIDCO processed the six applications and made allotments of land to the cooperative housing societies. Public Interest Litigation was filed challenging the allotments to the six Cooperative Housing Societies. High Court called for the files relating to the allotment and set aside the allotment. It on its own conclusions and interpretations of the file notations without calling for any explanation, made certain unwarranted observations as regards the making of the application to the then Chief Minister as also the notation “please put up” made by the then Chief Minister in the five applications. Hence the present appeal for expunging of certain remarks made by High Court against the then Chief Minister.

With regard to Civil Appeal No. 15 of 2007, Public Interest Litigation was filed. High Court disposed of the writ petition making certain observations against the appellant, then appointed as Managing Director-CIDCO even though he was not a party to the said proceedings nor was directed to be made a party to the PIL. It was observed that during the tenure of the appellant plots of certain project were allotted in contravention of conditions of allotment and the scrutiny was given a complete go-by and as such there was a complete dereliction of duty. The Authorities were directed to take appropriate action against the persons concerned. Charge sheet was issued to the appellant. Government sought action against the appellant by the tribunal since the High Court directed so. Hence the present appeals.

Allowing the appeal of the State and partly allowing the appeal of the Managing Director-CIDCO, the Court

HELD : 1.1. Various applications and representations on diverse subjects are received by the Chief Ministers of the States as the Head of

the State and in respect of the Ministries under their control. Often such applications are directly addressed by members of the public to the Chief Minister. The Chief Minister then endorses the same to the concerned department so that the same may subsequently be followed up by the concerned department. When the Chief Minister is on tour in various parts of the State, representations and applications are given to him by various people who meet him. In the routine course, the Chief Minister endorses the same with a noting "please put up" and forward the same to the concerned department. Such notation merely means that the concerned department should process the applications and representations lawfully and in accordance with certain prescribed procedure. While making such notations on the representations/applications so received, the Chief Minister does not analyse each and every case since this is to be done at the level of the concerned department which then scrutinizes the same in accordance with law. The notation is not even treated as a determination of eligibility or the merit of the concerned application. It is a routine notation made in the normal course and is really an action of forwarding to the concerned department the representations/applications received by the Chief Minister. The concerned department is then expected to examine the said representations/applications and decide the same on its own merits and in accordance with law. As to how he treats the file, the nomenclature given to such matters are of matters of internal administration of the concerned department/corporation. [Para 17] [98-F-H, 99-A-C]

1.2. The observations and strictures made by the High Court reflects on the functioning of the office of the Chief Minister and day-to-day discharge of the duties of the Chief Minister. After the endorsement 'please put up', is made the file may or may not be approved by the concerned department and it is clear that the said notations are not approval of the contents of the representation and no other meaning could be taken. The High Court has erred in holding that by making a notation 'please put up' the applications had blessings of the then Chief Minister. [Para 19] [99-F-H, 100-A]

1.3. The Civil Appeal at the instance of the State of Maharashtra is maintainable inasmuch as the observations and strictures made by the High Court shall affect the working and functioning of the office of the Chief Minister of the State. The submission of the first respondent that these averments had been made on the basis of the recommendations by the Chief Minister or other high functionaries acting at his behest and that all the rules and norms had been disregarded by CIDCO as a consequence of such

A recommendations has absolutely so basis whatsoever. The grievances expressed against the then Chief Minister is nothing but imaginary. Except making the endorsement 'please put up' the Chief Minister has not played any other role. [Para 19] [100-A-D]

B 1.4. As the High Court has erred in making observations as regards notations made in files which observations are made on their own reading and interpretation of the files without any further reference to the petitions or the then Chief Minister who was not even a party to the case and without even calling for an explanation in that regard. High Court has failed to notice that the Chief Minister was heading the Urban Development Department and
C CIDCO comes under the administrative control of the urban development and since the applications for allotment of land were received by the Chief Minister, who merely made a notation that the application be put up before the concerned authority. No notation whatsoever was made that the applications be processed by any particular date. The words 'please put up', only meant that the applications should be processed and decided in accordance with law and on
D its own merits. CIDCO which is a Corporation had detailed rules which govern the allotment of land and are to be complied with by CIDCO before any allotment of land is made. The records placed indicates that the applications put up to CIDCO were processed at various levels including the marketing manager, assistant marketing officer, managing director and upto the stage
E of board of directors. The High Court also erred in observing that the application made by respondent No. 10 had been received by the Chief Minister and bore his endorsement on 05.04.2005 to the effect please process and pass by 12.04.2004. The said documents have been perused. The above endorsement is not written by the Chief Minister and in fact the said application did not even reach the office of the Chief Minister at any point of time. [Para 21]

F [101-E-H, 102-A]

G 1.5. Allegations have been made against the then Chief Minister, however, he was not made party before the Court. High Court did not give an opportunity to the affected party, the then Chief Minister, before making remarks. It cannot be gain said that the nature of remarks made in the
H impugned judgment will cast a serious aspersion on the Chief Minister affecting his reputation, career etc. Condemnation of the then Chief Minister without affording opportunity of being heard was a complete negation of the basic principles of natural justice. (Therefore, the allegations made against him are one-sided and do not merit any consideration.) The observations/strictures made and the inference drawn by the High Court

from the notation 'please put up' made by the Chief Minister, behind his back and without calling for an explanation from him is wholly illegal, incorrect and unwarranted in the facts and circumstances of the case and are expunged. [Paras 19, 23, 24 & 25] [107-D-F, 99-H]

Dr. Dilip Kumar Deka and Anr. v. State of Assam and Anr., [1996] 6 SCC 234; *Rajiv Ranjan Singh 'Lalan' (VIII) & Anr. v. Union of India and Ors.*, [2006] 6 SCC 613; *Dr. J.N. Banavalikar v. Municipal Corporation of Delhi and Anr.*, [1995] Suppl. 4 SCC 89; *S. Pratap Singh v. The State of Punjab*, [1964] 4 SCR 733 and *A.K.K. Nambiar v. Union of India and Anr.*, [1969] 3 SCC 864, relied on.

2.1. High Court was not right in passing comments/observations/strictures against the appellant-Managing Director of CIDCO when the appellant was not a party to the said proceedings nor was directed to be made a party and also without giving an opportunity to the appellant of being heard. The act of High Court is in gross violations of the principles of natural justice. The observations made are also based on complete misunderstanding of the facts. The observations made would have wide ramifications and adverse impact on the career of the appellant. (The observations/strictures and remarks made by High Court against the appellant behind his back is totally uncalled for and not warranted.) Therefore, the remarks/observations/strictures made against the appellant are expunged. [Paras 30, 31 & 36] [110-B-C; D-E, 111-F]

2.2. When an authority takes a decision which may have civil consequences and affects the rights of a person, the principles of natural justice would at once come into play. Reputation of an individual is important part of ones life. One is entitled to have and preserve ones reputation and one also has a right to protect it. In case any authority in discharge of its duties fastened upon it under the law, travels into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter. In such circumstances, right of an individual to have the safeguard of the principles of natural justice before being adversely commented upon is statutorily recognized and violation of the same will have to bear the scrutiny of judicial review. [Paras 33 & 35] [111-A-B, E]

State of Bihar v. Lal Krishna Advani and Ors., [2003] 8 SCC 361; *Board of Trustees of the Port of Bombay v. Dilip Kumar Raghavendranath*

A *Natkarni*, [1983] 1 SCC 124; *Dr. Dilip Kumar Deka and Anr. v. State of Assam and Anr.*, [1996] 6 SCC 234; *Rajiv Ranjan Singh 'Lalan' (VIII) & Anr. v. Union of India and Ors.*, [2006] 6 SCC 613; *Dr. J.N. Banavalikar v. Municipal Corporation of Delhi and Anr.*, [1995] Suppl.4 SCC 89 and *A.K.K. Nambiar v. Union of India and Anr.*, [1969] 3 SCC 864, relied on.

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DF Marion v. Minnie Davis, [1955] American LR 171, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14 of 2007

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From the Final Judgment and Order dated 23.11.2005 of the High Court of Judicature of Bombay in P.L. No. 43/2005.

WITH

C.A. No. 15 of 2007.

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F.S. Nariman, R.F. Nariman, Mukul Rohtagi, P.H. Parekh, E.R. Kumar, Sameer Parekh, Ranjeeta Rohtagi, Nitin Thukral, Sumit Goel (for M/s. P.H. Parekh & Co.), Parimal K. Shroff, Bina Gupta, Inklee Barooah, Amrita Swarup, V.N. Raghupathy, Siddhartha Chowdhury for the Appellant and Vinay Mohan Lal, Appellant-In-Person (in C.A. No.

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15/2007).

G.E. Vahanvati, Solicitor General of India, Ravi Kadam, Adv. General for State of Maharashtra, Chander Uday Singh, Altaf Ahmed, S.S. Shinde, R.P. Wadhvani, Varun Thakur, Sanjay Dubey, A.S. Bhasme, Vinay Navare and Naresh Kumar for the Respondents.

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The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. :

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CIVIL APPEAL NO. 14 OF 2007 (Arising out of S.L.P. (Civil) No. 18965 of 2006)

1. Leave granted.

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2. The appellant State of Maharashtra has filed the above appeal from the judgment and order of the Bombay High Court dated 23.05.2005 *only for*

the purpose of expunging certain remarks made by the High Court, inasmuch as the same may affect the working and functioning of the office of the Chief Minister of the State of Maharashtra.

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BACKGROUND FACTS:

3. The City and Industrial Development Corporation (CIDCO) is an authority constituted under the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act) for development of Navi Mumbai as a township.

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4. CIDCO grants plots in Navi Mumbai for construction and development under the MRTP Act read with prevalent development control regulations for Navi Mumbai. There are detailed regulations and procedures for allotment of land by CIDCO to various entities.

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5. Five different applications were made by respondent Nos. 5 to 10 to the then Chief Minister of Maharashtra who was also the Minister for Urban Development. All business of Urban Development Department was under the control of the Minister for urban development.

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6. The then Chief Minister in turn noted on five of the said applications the words "please put up". Since the authority concerned i.e. CIDCO was required to process the same, the said applications were forwarded to the new town development authority i.e. CIDCO for further processing. No other or further endorsement of any nature whatsoever was made on any of the said files in relation to the said applications by the Chief Minister. Thus, except for the original noting "please put up", no other noting, direction or order had been made or passed on any of the said files by the Chief Minister. A 6th application though addressed to the Chief Minister, no endorsement whatsoever was made by the Chief Minister of Maharashtra on the said file. The said file at no stage reached the office of the Chief Minister of Maharashtra. The role of the Chief Minister ended on his endorsing five out of six files with the noting "please put up".

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7. The said six applications were processed by CIDCO and CIDCO made allotments of land to the six cooperative housing societies.

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8. Public Interest Litigation No. 43 of 2005 was filed in the Bombay High Court challenging the allotments to the six Cooperative Housing Societies.

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A 9. The Bombay High Court, after calling the files of CIDCO relating to
the allotment, by its judgment dated 23.11.2005 set aside the allotments. In
the judgment dated 23.11.2005, the Bombay High Court on its own
conclusions and interpretations of the file notations without calling for any
B explanation, made certain unwarranted observations as regards the making
of the application to the then Chief Minister as also the notation "please
put up" made by the then Chief Minister in the five applications. The High
Court in fact made a complete factual error in observing that a notation on
the application of respondent No. 10 "please process and pass by 12th
C April, 2004" was made by the then Chief Minister when in fact, no such
endorsement was made by the then Chief Minister. In the impugned order
dated 23.11.2005, the Bombay High Court made the following observations
against the then Chief Minister which, according to the appellant State of
Maharashtra, are unwarranted:-

D "(i) "When we look into these documents, what we find is that
the letters of application titled "Request for allotment" by
respondent Nos. 5 to 9 societies are computer print-outs. All
the letters are undated. All of them are addressed to the then
Chief Minister of Maharashtra Shri Sushilkumar Shinde and
not to CIDCO which as a statutory Corporation, is a separate
E competent legal entity. Each of them bears the endorsement
of the Chief Minister "please put up" dated 21st February
2004" (para 23)

F "(ii) "It is seen that Co-operative Housing Societies stated to be
having different names and different addresses in far off areas
have all sought to apply for allotment by writing identical
letters on the same day, not to CIDCO but to the then Chief
Minister of Maharashtra" (para 25)

G "(iii) The application of respondent No. 10 has been made
separately. It is also undated. It is received initially on 5th
April 2004 and bears endorsement of the Chief Minister dated
5th April, 2004 "Please process and pass by 12th April, 2004"
(para 27)

H "(iv) "Neither the then Chief Minister nor the Marketing Manager
nor the Managing Director of CIDCO are seen to have made

any query in spite of this astonishing similarity of approach of these six societies coming from different parts of the city. Strangely enough, their response to these identical applications is also astonishingly identical” (para 28)

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(v) It is esoteric how promoters of societies of such members initially applied not to CIDCO but to the Chief Minister whose office finds no place in the MRTP Act or the aforesaid Rules filed for grant of any plot of CIDCO”. (para 38)

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(vi) “It is not known how he became the Chief Promoter of the said Society which applied later than the other societies and whose application was not only directed to be put up by the then Chief Minister but to be put up by a specific date within a week of the application having been made and even before its copy was received by the Managing Director of CIDCO” (para 79)

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(vii) The Chief Minister endorsed on five of them to the Managing Director to “please put up” and on the sixth to process and pass by the specified date” (para 134)

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(viii) “Would the Managing Directors and the officers of CIDCO have entertained these applicants who are principally slum dwellers for the prime plot known as “Marine Drive of Navi Mumbai”. If they were to approach them without being led by these traders and supported by a builder and without the blessing of the Chief Minister? (para 139)”

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10. Mr. G.E. Vahanvati, learned Solicitor General of India and Mr. Ravi Kadam, learned Advocate General for the State of Maharashtra have appeared and argued the matter on behalf of the appellants. Mr. Chander Uday Singh, learned senior counsel appeared and countered the argument of the appellants on behalf of the contesting 1st respondent. Mr. Altaf Ahmed, learned senior counsel appeared for the CIDCO.

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11. The learned Solicitor General argued the matter at length and invited our attention to the strictures and remarks made by the High Court against the then Chief Minister of Maharashtra Mr. Sushil Kumar Shinde

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A and the documents at page Nos. 139, 141, 145, 147 and 149 and also the pleadings and other annexures.

B 12. Learned Solicitor General submitted that the present appeal was filed only for the limited purpose of expunging certain remarks made by the High Court against the then Chief Minister who was not even a party to the case and without calling for an explanation. He also submitted that it is not correct on the part of the Court to call for the files, pursue the same and make observations on its own understanding and interpretation of the notings in the file without calling for any explanation from the person making the noting or the concerned department. He would further submit that it was not proper and correct on the part of the High Court to draw adverse inference on certain endorsement made by the then Chief Minister without any reference to the State or the then Chief Minister who was not even a party to the case and without calling for an explanation. According to the learned Solicitor General, the file notings such as *please put up* are made in the usual day to day functioning of the office of the Chief Minister and various other offices and, therefore, the observation of the High Court against the then Chief Minister will affect the functioning of the Chief Minister and, therefore, it is not fair and justified.

E 13. Learned Solicitor General also cited the following rulings of this Court in support of his contention. They are :-

- F 1. *Dr. Dilip Kumar Deka & Anr. v. State of Assam & Anr.*, [1996] 6 SCC 234 (paras 6, 7 & 8).
- F 2. *Rajiv Ranjan Singh 'Lalan' (VIII) & Anr. v. Union of India & Ors.*, [2006] 6 SCC 613 at 645 (para 57)
- G 3. *Dr. J.N. Banavalikar v. Municipal Corporation of Delhi & Anr.*, [1995] Suppl. 4 SCC 89 (para 21).
- G 4. *S. Pratap Singh v. The State of Punjab*, [1964] 4 SCR 733 at 747 (para 2).
- H 5. *A.K.K. Nambiar v. Union of India & Anr.*, [1969] 3 SCC 864 at 867 (paras 8 & 9).

14. Mr. Chander Uday Singh, learned senior counsel for the first respondent (writ petitioner) submitted that the first respondent filed the writ petition by way of PIL in order to expose a massive and orchestrated scam by which CIDCO a special planning authority constituted under the Maharashtra Regional Town Planning Act, 1966 has diverted public lands intended for genuine cooperative housing societies to a small coterie of commercial builders/developers and thereby conferred massive commercial largesse upon such builders/developers while simultaneously causing losses to CIDCO and the members of the general public. According to him, small coterie of builders/developers approached the then Chief Minister of Maharashtra and by addressing applications directly to him in the name of societies on identical or suspiciously similar computer generated stationery/ letter heads made specific requests for allotment of prime plots of land by expressly mentioning the plot or plots desired by them and that the Chief Minister endorsed each such application with the words "*please put up*" and thereupon these applications were hand delivered to CIDCO's Head Office at Nariman Point, Mumbai and that these applications were assigned inward numbers thereby signifying that they are recommended by the Chief Minister and on the very same date, when they were received by CIDCO at Nirmal, the Vice Chairman and M.D. added their endorsements reading *please process early* or words to that effect. He would further submit that the Chief Minister's recommendation proved so compelling that CIDCO instantly allotted the chosen plots for residential user even though the classification and earmarking of these plots was commercial plus residential on the development plan of CIDCO thereby causing loss to CIDCO of the much higher premium available on C+R lands. It was submitted by learned senior counsel for the respondent that the High Court pronounced a detailed and well-reasoned judgment which dealt with the entire subterfuge resorted to in order to make such dummy allotments at the behest of the former Chief Minister of Maharashtra and have been dealt with in great detail by the Division Bench. He further submitted that the first respondent filed the writ petition in the High Court since there had been violations of law as well as of CIDCO's land allotment policy, *inter alia*, in making allotments to cooperative societies and that the first respondent had learnt that these allotments had been made on the basis of the recommendations by the then Chief Minister or other High functionaries acting at his behest and that all rules and norms had been disregarded by CIDCO as a consequence of such recommendations. Respondent No. 1 accordingly pleaded in para 4 and 14 of the writ petition that it appeared that these illegal allotments had been

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A made at the behest of the Chief Minister or other Ministers of the Government of Maharashtra and in para 14 have specifically called upon CIDCO to confirm or deny this fact.

B 15. According to the first respondent, it is apparent from the documents produced before the High Court and the manner in which allotments were made by CIDCO that this was done only on the behest of the then Chief Minister. Learned senior counsel for the first respondent further submitted that the special leave petition was filed to seek expunction of certain adverse comments made against the former Chief Minister of Maharashtra was filed by the State of Maharashtra and not by Shri Sushil Kumar Shinde. According to the learned counsel, it is not open to the State of Maharashtra to now file a special leave petition to challenge the said findings or remarks and that if at all anybody is aggrieved by the said finding or remarks, it would be the former Chief Minister and he had chosen not to file any special leave petition nor to question the same. Hence, the present special leave petition is not maintainable. While winding up his argument, learned senior counsel for the first respondent made a prayer that he would now implead the then Chief Minister of Maharashtra - Shri Sushil Kumar Shinde as a party respondent and that permission in that regard may be granted to him in view of the importance of the public interest litigation.

E 16. We have given our anxious and careful consideration to the submissions made by both the learned senior counsel. We have also carefully perused the pleadings, documents, annexures and the rulings cited at the time of hearing.

F 17. Various applications and representations on diverse subjects are received by the Chief Ministers of the States as the Head of the State and in respect of the Ministries under their control. Often such applications are directly addressed by members of the public to the Chief Minister. The Chief Minister then endorses the same to the concerned department so that the same may subsequently be followed up by the concerned department. G When the Chief Minister is on tour in various parts of the State, representations and applications are given to him by various people who meet him. In the routine course, the Chief Minister endorses the same with a noting "please put up" and forward the same to the concerned department. H Such notation merely means that the concerned department should process the applications and representations lawfully and in accordance with certain

prescribed procedure. While making such notations on the representations/ applications so received, the Chief Minister does not analyse each and every case since this is to be done at the level of the concerned department which then scrutinizes the same in accordance with law. In our view, the notation is not even treated as a determination of eligibility or the merit of the concerned application. It is a routine notation made in the normal course and is really an action of forwarding to the concerned department the representations/applications received by the Chief Minister. The concerned department is then expected to examine the said representations/applications and decide the same on its own merits and in accordance with law. As rightly pointed out by learned Solicitor General as to how he treats the file the nomenclature given to such matters are of matters of internal administration of the concerned department/corporation.

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18. It is pointed out to us that in the present case, the Chief Minister was heading the Urban Development Department. CIDCO comes under the administrative control of the said department. Since applications for allotment of land were received by the Chief Minister, he merely made a notation that the applications be put up before the concerned authority. No notation whatsoever was made that the applications be processed by any particular date. The words please put up, in our opinion, only meant that the applications should be processed and decided in accordance with law and on its own merits. CIDCO which is a Corporation had detailed rules which govern the allotment of land and are to be complied with by CIDCO before any allotment of land is made. The records placed before us indicates that the applications put up to CIDCO were processed at various levels including the marketing manager, assistant marketing officer, managing director and upto the stage of board of directors.

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19. In our view, the observations and strictures made by the High Court and are extracted in paragraphs supra certainly reflects on the functioning of the office of the Chief Minister and day-to-day discharge of the duties of the Chief Minister. As rightly pointed out by learned Solicitor General, after the endorsement 'please put up', is made the file may or may not be approved by the concerned department and it is clear that the said notations are not approval of the contents of the representation and in our view, no other meaning could be taken. The observations/strictures made and the inference drawn by the High Court from the notation please put up made by the Chief Minister are not warranted and are required to be expunged as rightly contended by learned senior counsel for the State of

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A Maharashtra. The High Court has, in our view, erred in holding that by making a notation please put up the applicants had blessings of the then Chief Minister. In our opinion, the civil appeal at the instance of the State of Maharashtra is maintainable inasmuch as the observations and strictures made by the High Court shall affect the working and functioning of the office of the Chief Minister of the State of Maharashtra. The submission of learned senior counsel for the first respondent that the first respondent had learnt that these averments had been made on the basis of the recommendations by the Chief Minister or other high functionaries acting at his behest and that all the rules and norms had been disregarded by CIDCO as a consequence of such recommendations as absolutely no basis whatsoever. The grievances expressed against the then Chief Minister is nothing but imaginary. Except making the endorsement 'please put up' the Chief Minister has not played any other role. The observations and strictures passed by the High Court against the then Chief Minister behind his back and without calling for an explanation from him is wholly illegal, incorrect and unwarranted and that the remarks made by the High Court against the then Chief Minister was most uncharitable and not called for.

20. We have perused the documents at page Nos. 139, 141, 143, 145, 147 and 149. At page 139, an application was made on behalf of Seaquan Cooperative Housing Society, Bombay requesting for allotment of residential plot for housing society at Sector-4, Plot No.24-B, Nerul. The said application was addressed to Shri Sushil Kumar Shinde, the then Chief Minister of the Maharashtra State. It was stated in the said application that CIDCO may allot the plot for residential purposes as per prevailing rules and that the applicants are ready to pay the necessary lease premium as per the rules and regulations. Since the application was made directly to the Chief Minister, he made an endorsement *please put up* on the same. At page 141, another application was made by Amey Cooperative Housing Society, Bombay requesting for allotment of residential plot at Sector-4, Plot No. 24-A, Nerul addressed to the then Chief Minister. Similar endorsement 'please put up' was made by the Chief Minister on this application. At page 143, a similar application was made by Sagarika Cooperative Housing Society requesting for allotment of residential plot addressed to the Chief Minister who made an endorsement saying 'please put up'. At page 145, Sealink Cooperative Housing Society made an application requesting for allotment of residential plot addressed to the Chief Minister who made an endorsement 'please put up'. An application was made at page 147 by Sea-view Cooperative Housing

Society addressed to the then Chief Minister who also made an endorsement saying 'please put up'. At page 149, an application made for allotment of developed land for residential purpose was made by Vinayak Cooperative Housing Society addressed to the then Chief Minister. The said application, though addressed to the Chief Minister, no endorsement whatsoever was made by the Chief Minister of Maharashtra on the said file. The said file at no stage reached the office of the Chief Minister of Maharashtra. The role of the Chief Minister ended on his endorsing 5 out of 6 files with the noting 'please put up'. Thereafter, the said 6 applications as per the records made available at the time of hearing were processed by CIDCO and CIDCO made allotment of lands to the said 6 Cooperative Housing Societies. These allotments were challenged in PIL No.43 of 2005 on various grounds. The High Court, after calling for the file of CIDCO relating to the said 6 allotments and perusing the same, by its judgments and order dated 23.11.2005 set aside the same. Challenging the said judgment Amey Cooperative Housing Society Ltd. filed special leave petition No.336 of 2006 questioning the correctness of the said judgment and the allotments made by CIDCO with which we are not concerned in this Civil Appeal. Elaborate and lengthy submissions were made in that case by the Senior Counsel appearing for the respective parties. The said special leave petition No. 336 of 2006 will separately be dealt with on merits by a separate judgment.

21. We are of the opinion that the strictures/observations/remarks made by the High Court against the then Chief Minister Shri Sushil Kumar Shinde is not warranted in the facts and circumstances of this case as according to us the High Court has erred in making observations as regards notations made in files which observations are made on their own reading and interpretation of the files without any further reference to the petitions or the then Chief Minister who was not even a party to the case and without even calling for an explanation in that regard. The High Court has failed to notice that the Chief Minister was heading the Urban Development Department and CIDCO comes under the administrative control of the urban development and since the applications for allotment of land were received by the Chief Minister, who merely made a notation that the application be put up before the concerned authority. The High Court also erred in observing that the application made by respondent No. 10 had been received by the Chief Minister and bore his endorsement on 05.04.2005 to the effect please process and pass by 12.04.2004. We have perused the said document. The above endorsement is not written by the Chief Minister and in fact the said

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A application did not even reach the office of the Chief Minister at any point of time.

LAW ON THE SUBJECT:

B 22. We shall now analyze and consider the rulings of this Court cited by learned Solicitor General.

1. *Dr. Dilip Kumar Deba & Anr. v. State of Assam & Anr.*, [1996] 6 SCC 234 (paras 6,7 & 8)

C The above judgment relates to expunging adverse remarks. The above was a case of adverse remarks recorded by the High Court against the members of hospital allegedly for misleading the court and stalling process of the court by submitting manipulated report regarding condition of a person to justify his shifting from police remand to the hospital. The High Court made adverse remarks without giving any opportunity to the members of extending or defending themselves, without any evidence showing that their conduct justified such remarks and without any necessity of such remarks for the purpose of deciding the matter. This Court held on facts that adverse remarks were unwarranted and hence expunged. This Court also cautioned superior courts to use temperate and moderate language and also held that opportunity to be given to the affected party before recording of adverse remarks by the Court. This Court also held thus:

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F “6. The tests to be applied while dealing with the question of expunction of disparaging remarks against a person or authorities whose conduct comes in for consideration before a Court of law in cases to be decided by it were succinctly laid down by this Court in *State of U.P. v. Mohd. Naim*, AIR 1964 SC 703. Those tests are:

G (a) Whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;

(b) Whether there is evidence on record bearing on that conduct justifying the remarks; and

H (c) Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

The above tests have been quoted with approval and applied by this Court in its subsequent judgments in *Jage Ram v. Hans Raj Midha*, [1972] 1 SCC 181, *R.K. Lakshmanan v. A.K. Srinivasan*, [1975] 2 SCC 466 and *Niranjana Patnaik v. Sashibhusan Kar*, [1986] 2 SCC 569.

7. We are surprised to find that in spite of the above catena of decisions of this Court, the learned Judge did not, before making the remarks, give any opportunity to the appellants, who were admittedly not parties to the revision petition, to defend themselves. It cannot be gainsaid that the nature of remarks the learned Judge has made, has cast a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career also. Condemnation of the appellants without giving them an opportunity of being heard was a complete negation of the fundamental principle of natural justice.

8. Judged in the context of the first test laid down in *Mohd. Naim's* case (supra) the above discussion of ours is sufficient to quash the impugned remarks, but we find that the remarks are vulnerable also to the second test laid down therein. On perusal of the order dismissing the revision petition we find that the remarks of the learned Judge are based solely upon the fact that the report of the medical Board consisting of four medical experts belied their report. Indeed, except the report of the Board we have also not found any other material on record from which the learned Judge could have legitimately and justifiably obtained satisfaction to pass the above remarks against the two appellants before us. We hasten to add that in making the above observation we have left out of our consideration the materials which prompted the learned Judge to make adverse comments against the IO."

2. *Rajiv Ranjan Singh 'Lalan' (VIII) & Anr. v. Union of India & Ors.*, [2006] 6 SCC 613 at 645 (para 57)

In the above case, Dr. AR. Lakshmanan, J. concurring with the opinion expressed by Hon. K.G. Balakrishnan, J. has observed that public interest litigation is meant for the benefit of the lost and the lonely and it is meant for the benefit of those whose social backwardness is the reason for no

A access to the Court and that PILs are not meant to advance the political gain and also to settle personal scores under the guise of PIL and to fight a legal battle. In para 57, it has been observed as follows:-

B "57. Certain allegations have been made against CBDT and the Public Prosecutors, Members of the Income-tax Tribunal, etc. None of them were made parties before us. Therefore, the allegations made against them are one-sided and cannot be looked into at all. We cannot also say that all these authorities have acted in a *mala fide* manner."

C 3. *Dr. J.N. Banavalikar v. Municipal Corporation of Delhi & Anr.*, [1995] Suppl. 4 SCC 89.

This Court, in the above case, in para 21, observed thus:

D "In the facts and circumstances of this appeal, it is not possible to hold that the impugned action in removing the appellant and appointing Dr. Patnaik is unfair or unjust or irrational or arbitrary or tainted with any *mala fide* intention. The contention of the appellant that in order to accommodate a junior doctor as Medical Superintendent in I.D. Hospital, Dr. Patnaik had been moved out from the said hospital to replace the appellant as Medical Superintendent of RBTB Hospital, is not only vague but lacks in particulars forming the foundation of such contention. Further, in the absence of impleadment of the junior doctor who is alleged to have been favoured by the course of action leading to removal of the appellant and the person who had allegedly passed *mala fide* order in order to favour such junior doctor, any contention of *mala fide* action in fact i.e. 'malice in fact' should not be countenanced by the court. This appeal therefore, fails and is dismissed without any order as to costs."

G 4. *S. Pratap Singh v. The State of Punjab*, [1964] 4 SCR 733 at 747, 748 & 749.

This Court in para 2 held thus:

H "We shall first take up for consideration the several allegations that

have been made and see whether they had been satisfactorily made out. Before proceeding further it is necessary to state that allegations of a personal character having been made against the Chief Minister, there could only be two ways in which they could be repelled. First, if the allegations were wholly irrelevant, and even if true, would not afford a basis upon which the appellant would be entitled to any relief, they need not have been answered and the appellant could derive no benefit from the respondents not answering them. We have already dealt with this matter and have made it clear that if they were true and made out by acceptable evidence, they could not be ignored as irrelevant; (2) If they were relevant, in the absence of their intrinsic improbability the allegations could be countered by documentary or affidavit evidence which would show their falsity. In the absence of such evidence they could be disproved only by the party against whom the allegations were made denying the same on oath. In the present case there were serious allegations made against the Chief Minister and there were several matters of which he alone could have personal knowledge therefore which he could deny, but what was, however, placed before the Court in answer to the charges made against the Chief Minister was an affidavit by the Secretary to Government in the Medical Department who could only speak from official records and obviously not from personal knowledge about the several matters which were alleged against the Chief Minister. In these circumstances we do not think it would be proper to brush aside the allegations made by the appellant, particularly in respect of those matters where they are supported by some evidence of a documentary nature seeing that there is no contradiction by those persons who alone could have contradicted them. In making this observation we have in mind the Chief Minister as well as Mrs. Kairon against whom allegations have been made but who have not chosen to state on oath the true facts according to them.

Before passing on to a consideration of the details of the several allegations there is one matter to which we ought to make reference at this stage and that is the admissibility and evidentiary value of the tape-recorded talks which have been produced as part of his supporting evidence by the appellant. The learned Judges of the High Court without saying in so many terms that these were

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A inadmissible in evidence, this being the contention raised by the
respondent-state, have practically put them out of consideration for
the reason that tape-recordings were capable of being tampered
with. With respect we cannot agree. There are few documents and
possibly no piece of evidence which could not be tampered with,
B but that would certainly not be a ground on which Courts could
reject evidence as inadmissible or refuse to consider it. It was not
contended before us the tape-recordings were inadmissible. In the
ultimate analysis the factor mentioned would have a bearing only
on the weight to be attached to the evidence and not on its
admissibility. Doubtless, if in any particular case there is a well-
C grounded suspicion, not even say proof, that a tape-recording has
been tampered with, that would be a good ground for the court to
discount wholly its evidentiary value. But in the present case we
do not see any basis for any such suggestion. The tape-recordings
were referred to by the appellant in his writ petition as part of the
D evidence on which he proposed to rely in support of his assertions
as regards the substance of what passed between him and the
Chief Minister and the members of the latter's family on the several
matters which were the subject of allegations in the petition."

E 5. *A.K.K.Nambiar v. Union of India & Ors.*, [1969] 3 SCC 864 at 867.
This Court in paras 8 & 9 held thus:

F "The appellant made allegations against the Chief Minister of
Andhra Pradesh and other persons some of whose names were
disclosed and some of whose names were not disclosed. Neither
the Chief Minister nor any other person was made a party. The
appellant filed an affidavit in support of the petition. Neither the
petition nor the affidavit was verified. The affidavits which were
G filed in answer to the appellant's petition were also not verified.
The reason for verification of affidavits are to enable the Court to
find out which facts can be said to be proved on the affidavit
evidence of rival parties. Allegations may be true to knowledge or
allegations may be true to information received from persons or
allegations may be based on records. The importance of verification
is to test the genuineness and authenticity of allegations and also
to make the deponent responsible for allegations. In essence
H verification is required to enable the Court to find out as to whether

it will be safe to act on such affidavit evidence. In the present case, the affidavits of all the parties suffer from the mischief of lack of proper verification with the result that the affidavits should not be admissible in evidence.

The affidavit evidence assumes importance in the present case because of allegations of *mala fide* acts on the part of the respondents. The appellant alleged that the Union of India made the order of suspension because of the pressure of the Chief Minister of the State of Andhra Pradesh. The appellant, however, did not name any person of the Union of India who acted in that manner and did not implead the Chief Minister as a party. In order to succeed on the proof of *mala fides* in relation to the order of suspension, the appellant has to prove either that the order of suspension was made *mala fide* or that the order was made for collateral purposes. In the present case, the appellant neither alleged nor established either of these features.”

23. In the instant case, allegations have been made against the then Chief Minister, however, he was not made party before the Court. Therefore, the allegations made against him are one-sided and do not merit any consideration.

24. We are surprised to find that inspite of catena of decisions of this Court, the High Court did not, give an opportunity to the affected party, the then Chief Minister, before making remarks. It cannot be gainsaid that the nature of remarks made in this judgment will cast a serious aspersion on the Chief Minister affecting his reputation, career etc. Condemnation of the then Chief Minister without affording opportunity of being heard was a complete negation of the basic principles of natural justice.

25. For the foregoing reasons, we have no hesitation in expunging the remarks/observations/strictures made against the then Chief Minister of Maharashtra - Shri Sushil Kumar Shinde and allow the appeal filed by the State of Maharashtra who, in our opinion, is competent to maintain this appeal and order expunction of the remarks and observations/strictures made against the then Chief Minister. The appeal stands allowed only to the above extent. We make it clear that we are not expressing any opinion on merits of the rival claims made in the other special leave petition filed by

A the cooperative societies in special leave petition No. 336 of 2006 which will be dealt with separately.

26. In the result, the civil appeal arising out of special leave petition No. 18965 of 2006 stands allowed. However, there will be no order as to costs.

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CIVIL APPEAL No. 15 of 2007 (Arising out of S.L.P. (Civil) No.2707 of 2006)

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D 27. The above appeal was filed by Mr. Vinay Mohan Lal who is a member of the IAS, 1970 batch working in the grade of Principal Secretary in the Maharashtra Government appointed as M.D. CIDCO and presently serving as M.D. MAFCO. The High Court, while disposing off the writ petition filed by way of PIL, had made certain observations against the appellant. The appeal was argued by the appellant himself. He submitted that he was neither a party to the said proceedings nor was directed to be made a party to the PIL. The observations made by the High Court against him is quoted herein below for ready reference:

E “We are also amazed as to how the then Managing Director, who is an IAS officer, got persuaded that these are genuine Housing Societies satisfying all the requirements and capable of bearing the financial burden. (para 38)

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G “It was a grand plan to take advantage of their poverty, lack of understanding and ignorance, and it could not be executed unless, the original chief promoters, the builders and the officers of CIDCO at the higher level such as the Managing Director were party to it. Would the Managing Directors and the officers of CIDCO have entertained these applicants who are principally slum dwellers for this prime plot known as “Marine Drive of Navi Mumbai”, if they were to approach them without being led by these traders and supported by a builder and without the blessings of the Chief Minister? It is either a case of involvement in the design or of gross dereliction of duty. In either case, it is unjustifiable and highly objectionable and the consequences must follow (para 139).

H “Now suddenly it appears that this device has been invented and with the participation of the officers of CIDCO right from the

Managing Director to who so ever are the persons below, all the conditions of allotment and scrutiny are given a go by and a prime plot sought to be handed over to a builder on a platter. A good scheme has been permitted to be misused with full connivance of the officers of CIDCO. (para 140)

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“What we find is that there is a complete dereliction of responsibilities on the part of the then Managing Director of CIDCO and who so ever were incharge of this project. Merely because the then CM had asked them to process early, they have given a complete go-by to scrutiny.... In view of what is stated above, we expect the authorities of the State Government and CIDCO to take appropriate actions against the persons concerned so that this kind of deviation does not take place in future. (para 141)”

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28. The party in person submitted that the said observation made by the High Court without hearing the appellant has now mis-interpreted by the government counsel in their submission before the CAT in O.A. No. 528 of 2005 wherein the charge sheet issued to the appellant on 11th July has been challenged due to which the government counsel pointed out to the tribunal stating that the government was now under obligation to initiate action against the appellant since the High Court has so directed.

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29. According to Mr. V. Mohan Lal the impugned judgment is not only erroneous but is also passed on inferences and surmises which are not sustainable. According to him, the petitioners before the High Court, present respondent No.11 has mis-interpreted the facts and have misled the High Court and that events which have happened after due allotment and which could not have been anticipated at the time of allotment have been considered to conclude that the allotment itself was improper. Therefore, the appellant filed the above appeal being aggrieved by the observations made by the High Court in the impugned judgment with that limited scope. According to the appellant, the High Court was not right in passing strictures against the appellant when the appellant was not a party to the said proceedings. He further submitted that the High Court was not right to pass adverse comments against the appellant which are likely to affect the career of the appellant without giving an opportunity to the appellant of being heard. He therefore, submitted that the order of the High Court is in utter violation of

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A principles of natural justice. According to him, the comments made against the appellant were uncalled for in the facts and circumstances of the case and that the said comments which were made without the appellant being heard could at all have been referred to and relied on by the High Court in some other proceedings.

B 30. We see much force and substance in the contentions put forward by the party in person. In our opinion, the High Court was not right in passing comments/observations/strictures against the appellant when the appellant was not a party to the said proceedings nor was directed to be made a party. The High Court was also not right in passing the comments against the appellant without giving an opportunity to the appellant of being heard. The act of the High Court, in our opinion, is in gross violation of the principles of natural justice.

D 31. The party in person cited a ruling of the this court being *State of Bihar v. Lal Krishna Advani & Others*, [2003] 8 SCC 361 at page 367 wherein it was observed that strictures cannot be passed against an individual without making him a party and without giving an opportunity to be heard since the right to reputation is an individual's fundamental right. In our opinion, the observations made by the High Court in paras 38, 139, 140 & 141 of the impugned order are absolutely uncalled for as the appellant was not a party to the said PIL and they are also based on complete misunderstanding of the facts. The observations made by the High Court as rightly pointed out by the party in person would have wide ramifications and adverse impact on the career of the appellant.

F 32. We have already dealt with the cases and the rulings on the subject in question in the earlier part of the judgment in the appeal filed by the State of Maharashtra which, in our opinion, squarely applies to the facts and circumstances of the case filed by the party in person. We, therefore, expunge the remarks/observations/strictures made against the appellant as the same has been made behind his back. We also make it clear that we are not expressing any opinion on the merits of the special leave petition No.336 of 2006 filed by Amey Cooperative Society which will be dealt with absolutely on merits of the rival claims by a separate judgment.

H 33. The party in person has also pointed out certain findings in the judgment of the High Court. We do not propose to go into the merits of the

other contentions which is the subject-matter of the special leave petition No.336 of 2006. In our opinion, when an authority takes a decision which may have civil consequences and affects the rights of a person, the principles of natural justice would at once come into play. Reputation of an individual is an important part of ones life. It is observed in 1955 American LR 171 *DF Marion v. Minnie Davis* and reads as follows:-

“The right to enjoyment of a private reputation, unassailed by malicious slander is of an ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property.”

34. This court also in *Board of Trustees of the Port of Bombay v. Dilip Kumar Raghavendranath Natkarni*, [1983] 1 SCC 124 has observed that right to reputation is a facet of right to life of a citizen under Article 21 of the Constitution.

35. It is thus amply clear that one is entitled to have and preserve ones reputation and one also has a right to protect it. In case any authority in discharge of its duties fastened upon it under the law, travels into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter. In such circumstances, right of an individual to have the safeguard of the principles of natural justice before being adversely commented upon is statutorily recognized and violation of the same will have to bear the scrutiny of judicial review.

36. For the aforesaid reasons, we hold that the observations/strictures and remarks made by the High Court against the appellant behind his back is totally uncalled for and not warranted. We, therefore, have no hesitation to order expunction of the remarks made in para Nos. 38,139, 140 and 141 of the impugned judgment. The civil appeal is allowed only to the above extent. We order no costs.

N.J.

Civil Appeal No. 14/2007 allowed.
Civil Appeal No. partly 15/2007 allowed.