

CAMPAIGN FOR JUDICIAL ACCOUNTABILITY  
AND REFORMS

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v.

UNION OF INDIA AND OTHERS

(Writ Petition (Crl.) No. 169 of 2017)

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DECEMBER 01, 2017

[R. K. AGRAWAL, ARUN MISHRA AND  
A. M. KHANWILKAR, JJ.]

*Public Interest Litigation: Abuse of process of law – Writ petition seeking writ of mandamus to constitute a Special Investigation Team (SIT) headed by retired Chief Justice of India to investigate in the matter of alleged conspiracy and payment of bribes for procuring favourable orders in a matter pending before Supreme Court – Plea of Union of India that petitioner is abusing the process of court and this very issue in an identical writ petition titled Kamini Jaiswal v. UOI was considered and dismissed by this court on 14.11.2017 and, therefore, instant writ petition is also liable to be dismissed on this ground alone – Held: The FIR which came for consideration in the case of Kamini Jaiswal and in the instant case, is the same – The facts, the relief, the submissions being same which was in Kamini Jaiswal, no ground to entertain the instant petition was made out as the matter had already been decided by this Court – The petition is not only wholly frivolous, but contemptuous, unwarranted, aims at scandalizing the highest judicial system of the country, without any reasonable basis and filed in an irresponsible manner, that too by a body of persons professing to espouse the cause of accountability – The instant petition, in particular, the manner in which it has been pursued without any remorse by questioning the decision rendered on the subject matter by this Court including the plea taken in the earlier petition is gross abuse of the process of court – Therefore, writ petition is dismissed with cost of Rs. 25 lakhs to be deposited by the petitioner – Cost.*

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*Kamini Jaiswal v. Union of India and Another* 2017  
(13) SCALE 417 – referred to.

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Case Law Reference

2017 (13) SCALE 417 referred to Para 4

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Criminal) No.169 of 2017.

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Under Article 32 of the Constitution of India.

K.K. Venugopal, AG, Tushar Mehta, ASG, Shanti Bhushan, Sr. Adv, Prashant Bhushan, Ms. Neha Rathi, Ms. Amiy Shukla, Ms. Surabhi Kumari, Shakti Vardhan, O. Kuttan, Devesh Agnihotri, Gaurav Bhatia, Advs for the appearing parties.

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The following Order of the Court was delivered :

ORDER

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1. By means of the present writ petition (public interest litigation) (PIL), the petitioner, Campaign for Judicial Accountability and Reforms, through its Secretary, has approached this Court seeking a writ of *mandamus* or any other writ or direction of similar nature to constitute a Special Investigation Team (SIT) headed by a retired Chief Justice of India to investigate in the matter of alleged conspiracy and payment of bribes for procuring favourable order in a matter pending before this Court and take consequential actions thereafter along with a direction to the Central Bureau of Investigation (CBI) to hand over all the materials/ evidence collected so far in the FIR bearing No. RC10(A)/2017-AC.III, New Delhi to the SIT to be constituted by this Court.

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2. We have heard Shri Prashant Bhushan, learned counsel for the petitioner and Mr. K.K. Venugopal, learned Attorney General appearing for the Union of India.

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3. Shri Prashant Bhushan, referring to the FIR dated 19.09.2017 filed by the CBI, New Delhi submitted that in the FIR names of various persons have been mentioned as suspected accused along with other unknown public servants and private persons. According to him, the aforesaid FIR has been lodged regarding some criminal conspiracy for getting a matter pending before this Court settled. He thus submitted that one does not know how many public and private persons are involved in it and the matter relates to huge gratification for inducing public servants in a matter pending before this Court. He, however, emphasized that the purpose of filing this petition is not to name any Judge of this Court

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but to protect the independence of the judiciary and in order to arrive at an impartial investigation, this Court may appoint a SIT headed by a retired Chief Justice of India. A

4. Learned Attorney General for India, on the other hand, submitted that the petitioner is abusing the process of court and this very issue, in an identical writ petition, being No. W.P. (Crl.) No. 176 of 2017 titled *Kamini Jaiswal vs. Union of India and Another* has been considered and the writ petition has been dismissed by this Court on 14.11.2017. B Therefore, the present writ petition is also liable to be dismissed on this ground alone.

5. We have given our thoughtful consideration to the various pleas raised by learned counsel for the parties and we find that in *Kamini Jaiswal (supra)*, this Court had considered the similar plea raised by Shri Prashant Bhushan and had dealt in detail vide judgment and order dated 14.11.2017. For ready reference, the reliefs, the facts as also the findings recorded by this Court in *Kamini Jaiswal (supra)* in paragraph Nos. 4, 7, 8, 22 and 29 are reproduced below:- C D

“4. In the writ petitions, a prayer has been made to constitute a Special Investigation Team (SIT), headed by retired Chief Justice of India, to investigate the offences arising out of FIR being RC.10(A)/2017-AC. III dated 19.9.2017 recorded at New Delhi by the CBI and those connected therewith and take consequential action thereafter in accordance with law. A prayer was also made to direct the CBI, to produce before this Court for its perusal and, preserve and protect, all evidences/materials collected so far and hand over all the materials/evidences collected so far in the FIR to the SIT to be constituted by this Court. E F

7. On 19.9.2017, an FIR was registered against the following persons in connection with the case :

- (i) Shri I.M. Quddusi, retired Judge of the High Court of Odisha.
- (ii) Smt. Bhawana Pandey r/o GK. New Delhi (private person)
- (iii) Shri B.P. Yadav (private person) G
- (iv) Shri Palash Yadav (private person)
- (v) Shri Sudhir Giri (Private person)
- (vi) Shri Biswanath Agrawala, r/o HIG – 136, Phase 1, Kanan Vihar, Bhubaneshwar, Odisha (Private person)
- (vii) Other unknown public servants and private persons. H

A 8. It was alleged in the FIR, that Mr. B.P. Yadav had requested  
Justice I.M. Quddusi and Smt. Bhawana Pandey to get the matter  
settled in the apex Court through their contacts. They engaged  
B Mr. Biswanath Agarwala, a private person and a resident of  
Bhubaneswar, Orissa for getting the matter settled in the apex  
Court. Mr. Biswanath Agrawala claimed that he would get the  
matter favourably settled. He demanded huge gratification for  
inducing the public servants by corrupt and illegal means. Further,  
that Mr. B.P. Yadav, Mr. Palash Yadav, Justice I.M. Quddusi,  
Mrs. Bhawana Pandey and Mr. Sudhir Giri were all likely to meet  
C Mr. Biswanath Agrawala for delivering the agreed illegal  
gratification at Delhi shortly. The FIR was recorded on 19.9.2017  
whereas this Court had already disposed of the matter on  
18.9.2017. It is averred in the petition that the case discloses  
commission of offence punishable under section 8 of the Prevention  
of Corruption Act, 1988 and section 120B of the IPC against the  
D named persons as well as against the unknown public servants  
and private persons. It is further averred in the petition that since  
the matter involves persons placed at the highest echelons of power  
including justice delivery system and in subsequent raids made by  
the CBI it has recovered close to Rs.2 crores in cash, the agency  
has seized Rs.1 crore which the Hawala operator had handed  
E over to an aide of the retired Judge I.M. Quddusi.

22. The submissions so raised, and averments so made, in this  
petition, and the entire scenario created by filing of two successive  
petitions, are really disturbing a lot. The entire judicial system has  
been unnecessarily brought into disrepute for no good cause  
F whatsoever. It passes comprehension how it was, that the  
petitioner presumed, that there is an FIR lodged against any public  
functionary. There is an averment made in the writ petition that it  
is against the highest judicial functionaries; that FIR has been  
recorded. We do not find reflection of any name of the Judge of  
this Court in the FIR. There is no question of registering any FIR  
G against any sitting Judge of the High Court or of this Court as it  
is not permissible as per the law laid down by a Constitution Bench  
of 5 Hon'ble Judges of this Court in the case of *K. Veeraswami v.  
Union of India* (1991) 3 SCC 655 wherein this Court observed  
that in order to ensure the independence of the judiciary the  
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apprehension that the Executive being largest litigant, it is likely to misuse the power to prosecute the Judges. Any complaint against a Judge and investigation by the CBI if given publicity, will have a far reaching effect on the Judge and the litigant public. The need, therefore, is of judicious use of action taken under the Act. There cannot be registration of any FIR against a High Court Judge or Chief Justice of the High Court or the Supreme Court Judge without the consultation of the Hon'ble Chief Justice of India and, in case there is an allegation against Hon'ble Chief Justice of India, the decision has to be taken by the Hon'ble President, in accordance with the procedure prescribed in the said decision. Thus, the instant petitions, as filed, are a misconceived venture inasmuch, as the petition wrongly presupposes that investigation involves higher judiciary, i.e. this Court's functionaries are under the scanner in the aforesaid case; that independence of judiciary cannot be left at the mercy of the CBI or that of the police is a red herring. There cannot be any FIR even against the Civil Judge/Munsif without permission of the Chief Justice of the concerned court; and rightly, FIR has not been registered against any sitting Judge. Otherwise, on unfounded allegations, any honest Judge to the core, can be defamed, and reputation can be jeopardized. No Judge can be held responsible for what may, or has happened in the corridors, or for 'who purports to sell whom'. The alleged actions of a retired Judge of a High Court, allegedly assuring and promising, a 'favourable' decision in the aforesaid circumstances of the case which was then pending before this Court, in the aforesaid circumstances and has assured favourable orders, begs the question, and we wonder, as to what favourable orders have been passed. As is apparent from the aforesaid narration of facts, there was no favourable order granted by this Court in favour of the medical college for the current academic session 2017-18, rather its inspection for considering confirmation of letter of permission for the next year 2018-19 had been ordered. The decision will be in the hands of the MCI. After decision has been rendered on 18.9.2017 by this Court, an FIR has been lodged and it appears that money was yet to be exchanged. The FIR dated 19.9.2017 reflects that Mr. B.P. Yadav, Justice Quddusi, Ms. Bhawana Pandey, and Mr. Sudhir Giri were likely to meet Mr. Biswanath Agarwala for getting favourable order at Delhi shortly; whereas

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A this Court has already decided the matter on 18.9.2017. Thus it is a far fetched and too tenuous to even assume or allege that the matter was pending in this Court for which any bribe was to be delivered to anyone.

B 29. .... Ultimately after arguing at length, at the end, it was submitted by the petitioner and her counsel that they were not aiming at any individual. If that was not so, unfounded allegations ought not to have been made against the system and that too against the Hon'ble Chief Justice of this country. In case majesty of our judicial system has to survive, such kind of petitions should not have been preferred that too against the settled proposition of law laid down by this Court in the aforesaid decisions of this Court in *Dr. D C Saxena* (supra) and *K. Veeraswami* (supra)."

C 6. The FIR which came for consideration in the case of *Kamini Jaiswal* (supra) and in this case, is the same. Further, we find that in *Kamini Jaiswal* (supra), this Court had noted the circumstances under which similar petition, that is, W.P. (CrI.) No. 176 of 2017 was filed by Advocate Kamini Jaiswal on 09.11.2017, i.e., immediately on the next day of the mentioning of the present petition on 08.11.2017. The facts, the relief, the submissions being same which was in *Kamini Jaiswal* (supra), we do not find any good ground to entertain this petition as the matter had already been decided by this Court vide judgment and order dated 14.11.2017 relevant portions of which have already been reproduced above.

D 7. It is also relevant to mention here that this Court in paragraph 22 in *Kamini Jaiswal* (supra) has raised its concern about filing of the successive writ petitions in the following words:

F "22. The submissions so raised, and averments so made, in this petition, and the entire scenario created by filing of two successive petitions, are really disturbing a lot. The entire judicial system has been unnecessarily brought into disrepute for no good cause whatsoever. It passes comprehension how it was, that the petitioner presumed, that there is an FIR lodged against any public functionary. There is an averment made in the writ petition that it is against the highest judicial functionaries; that FIR has been recorded. We do not find reflection of any name of the Judge of this Court in the FIR...."

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8. The petition is not only wholly frivolous, but contemptuous, unwarranted, aims at scandalizing the highest judicial system of the country, without any reasonable basis and filed in an irresponsible manner, that too by a body of persons professing to espouse the cause of accountability. What an irony of fate, the petitioner has itself forgotten its accountability and filing of such petition may entail in ultimate debarment of such petitioners from filing so-called public interest litigation which in fact has caused more injury to cause of public than subserving it.

9. In view of the foregoing discussion, we are of the considered opinion and we are constrained to say that the present petition, in particular, the manner in which it has been pursued without any remorse by questioning the decision rendered on the subject matter by this Court including the plea taken in the earlier petition as noted in paragraph 29 of the said decision, is gross abuse of the process of court. Therefore, it has to be dismissed with exemplary costs in order to ensure that such attempt is not repeated in future.

10. Accordingly, the writ petition is dismissed with cost of Rs. 25 (twenty five) lakhs to be deposited by the petitioner before the Registry of this Court within six weeks whereafter the said amount shall be transferred to Supreme Court Bar Association Advocates' Welfare Fund.