

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.14825 of 2016

ORDER:

The petitioner herein by name Y.V.Rao is the 1st accused among five accused (including A2- M/s. C.R. Narayana Rao (for short 'CRN firm') represented by its partner-A4-C. Narayanan Srinivasan and A.3-M/s. Nagarjuna Constructions Company Limited (for short 'NCCL') represented by its DGM(T)-A.5-Harish Chandra Dwivedi) in C.C.No.10 of 2016 on the file of I Additional Special Judge for CBI Cases, Hyderabad. The cognizance order of the learned Special Judge is from the final report dated 06.11.2015 of the respondent/ CBI/ ACB, Hyderabad, outcome of FIR dated 28.02.2013 in RC 03/ (A)/ 2013-CBI/ ACB/ Hyderabad.

2. The petition is filed by impugning said cognizance order in seeking to quash said calendar case proceedings, taken cognizance so far as against the petitioner(A1) for the offences punishable under Sections 120(B) read with 420, 468 and 471 IPC, Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

3. The quash petition describes the facts that the petitioner is a retired employee of NIT, Karnataka, which is under the control of Ministry of Human Resources Development, Government of India and he was retired from service as Professor on 31.03.2013 and prior to that he worked as Director, NIT, Warangal during 2005 to 2010.

Prior to his work at NIT, Karnataka as Director (Additional Charge), he worked as Lecturer and Reader (Mining Department) in Osmania University, Hyderabad from 1976 to 1987 including as Head of the Department, Chairperson of Civil Engineering Systems and he signed MOU with several universities in connection with exchange of Technical Education with Foreign Universities while working in NIT, Warangal and

he was also Member of Oversight Committee in relation to OBC reservation in Central Educational Institutions, 2006, Chairman, AICTE South Central Region, Hyderabad during 2007-2009, Member, All India Board of Post Graduate Education and Research, 2007, Member, Governing Council and Executive Board, ISM University, Dhanbad, 2008, Chairman, All India Board of Undergraduate Studies, 2009, Member, IISER Council Standing Committee, 2009 and Member, NIT Council Committee on Academics, 2010. The Regional Engineering College, Warangal was declared as NIT, Warangal and registered as Society with Memorandum and Articles under Central Societies Registration Act, 1860 on 16.08.2002 to carry on administration and management of NIT, Warangal, delegation of its power to the Board of Governors and of NIT and ion turn delegate the said powers to any of the Committee or Committees constituted by it or any officer or officers of it to frame the first rules of the institute and to delegate such powers as provided in Memorandum and Articles, Rules and Regulations.

4. All NITs in the year 2007 were declared as institutes of national importance by bringing under the NIT Act, 2007 and NIT, Warangal is at S.No.18 among 20 appended to the Schedule under the Act and as per Section 26 of the NIT Act, the priority of the authorities of the institute as prescribed under the Statute 3 consists of the Board of Governors as constituted under Section 11 of the Act, the Senate as constituted under Section 14 of the Act, the Finance Committee as constituted under first Statute 10 and the Buildings and Works Committee as constituted under First Statute No.12 and for that the Director is the ex-officio member in the Board of Governors and other members include senior officers of MHRD and CPWD nominated by the Central Government and engineering officials of the State Government apart from professors of the Institute

and the Registrar of the institute is Member Secretary of the Board of Governors, to circulate the minutes of the meeting to all the members and also acts as Member Secretary in the Building Works Committee and finance Committee Secretary as per provisions of NIT Act and the First Statute. Under Statute No.6 all orders and decisions of the Board shall be authenticated by the signature of the Director or Registrar or any authorized person of the Board and under Statute 17(12) all contracts for and on behalf of the Institute except one between the institute and the Director shall when authorized by a resolution of the Board passed in that behalf be in writing and be expressed to made in the name of the institute and every such contract to be executed on behalf of the Institute by the Directors. However, Director shall not be personally liable in respect of anything under such contract and further under Statute 17(14) the Director may, at his discretion constitute such committees, as he may consider appropriate for smooth functioning of the Institute. Under Section 11 of the NIT Act, the members of the Board of Governors of every institute shall consist of the Chairperson to be nominated by the visitor, the Director, Ex-officio, two persons not below the rank of Joint Secretary to the Government of India, to be nominated by the Central Government from amongst the persons dealing with technical education and finance, two persons to be nominated by the State Government among persons, who in the opinion of that such Government or technologists or industrialists of repute, two persons at least one of whom shall be a women, having special knowledge or practical knowledge in respect of education, engineering or science, to be nominated by the council and one Professor, one Assistant Professor or Lecturer of that institute to be nominated by the Senate. As per Section 13 of the NIT Act, the powers and functions of the Board under

which the Board of Governors of every institute among others shall be responsible for the general superintendence and control of the affairs of the institute and shall exercise of all powers of the institute not otherwise provided for by this Act, to make statutes and to consider and pass resolutions on the annual report, the annual budget estimates of the institute for the next financial year and submitting them to the council together with a statement of its development plans and to exercise such other power and perform such other duties as may be conferred or imposed upon the Board by this Act or Statutes. As per Section 18(1) of the Act, the Registrar of every institute shall be appointed on such terms and conditions as may be laid down by the Statutes and shall be the custodian of records, the Common Seal, the funds of the institute and such other property of the Institute as the Boards shall commit to his charge. As per Section 18(2) to (4), the Registrar shall also act as the Secretary of the Board, Senate and such committees as may be prescribed by the statutes, shall be responsible to the Director for the proper discharge of his functions and shall exercise such other powers, performance of such other duties as may be assigned to him by the Act or the statutes or by the Director. As per Section 22 of the NIT Act, the accounts of every institute shall be audited by the Comptroller and Auditor-General of India (CAG) and as certified by the CAG together with the audit report shall be forwarded annually to the Government of India and the Government shall cause the same to be laid before each House of Parliament in accordance with such procedure as may be laid down by the Central Government.

5. From the above, the management of the institute is done by the Board and all contracts for and on behalf of the institute shall when authorized by a resolution of the Board passed in that behalf be

in writing and be expressed to be made in the name of the institute and every such contract shall be executed on behalf of the institute by the Director, for the Director shall not be personally liable and the annual accounts of every institute shall be audited by the CAG and the audit report shall be forwarded annually to the Government of India to place before each House of Parliament and no individual officer of the institute has any control, power or authority either in the management of the institute or in taking any decision in respect of management.

6. While so, in 2006, Government of India enacted Central Educational Institutions (Reservation in Admission) Act, 2006, 27% reservation is provided for other backward communities in Central Educational Institutions under Section 3(iii) of the Act and as per Section 6 of the Act of Central Educational Institutions were directed to give effect to Sections 3 to 5 (pertaining to reservations) from the calendar year 2007. The Ministry of Human Resources Development, Department of Higher Education, Government of India vide priority letter dated 26.10.2006 directed all the Directors of NITs, while confirming directions given earlier to prepare detailed project report for implementation of reservations for OBCs and submission of the same to AICTE and the Planning Commission, requested to supply copies of DPRs immediately on priority basis for further processing the matter. In December, 2006, in compliance of the above directions of MHRD, NIT, Warangal submitted DPR (revised) for implementation of reservations for OBCs and capacity expansion. In the said DPR, it is stated that construction of two hostels with capacity of 200 and 1000 is already started and one more hostel with a capacity of 1600 will be constructed, since the proposed increase of 54% to implement reservation for OBC will make the total intake at the end of four academic years 2010 – 2011

is 5000. Further funds required for construction of hostel with 1600 capacity was also proposed by the institute in the budget estimates under non plan and plan for the year 2007-2008 also submitted to the Government of India as approved by the Finance Committee and Board of Governors in which the proposal for Hall of residence for 1600 students is given at S.No.4 of D (I) Plan Auxiliary Budget under OBC (page 18). The MHRD by letter No.F21-12/ 2007-TS, III, dated 24.04.2007 has communicated allocation of Rs.6,000/- lakhs to NIT, Warangal for 2007-2008 with plan, for implementation of OBCs reservation policy and as such it can be ascertained that not only the administrative approval, but expenditure sanction was also given. In furtherance of the proposal of the Government of India for implementation of reservation for OBCs and priority to construct hostel with capacity of 1600 as mentioned in DPR on 23.02.2007, notification for expression of interest for service providers/project Management Consultant, for construction of hall of Residence for capacity of 1600 students was issued by the institute, vide notification dated 23.02.2007, for which 17 firms responded and out of it 9 firms were shortlisted by the committee consisting of the Dean (Admn.), the Registrar, Dean (P&D), Assistant Professor, CED and Resident Engineer. On consideration of the conceptual drawings and proposals submitted by the short listed firms before the committee, the firms were placed in the order of preference. Based on the recommendations of the Committee and with approval of Buildings and Works Committee the letter of acceptance dated 07/08.05.2007 was issued to CRN firm(A.2) based at Chennai, after due negotiations for reduction in the service charges quoted by the firm from 1.5%to 1.2%on Design Engineering and 1.6%to 1.4%on Project Consultancy. Subsequently, on approval by the BOG in the 11th Meeting dated

05.06.2007, the institute entered into an agreement No.64/2007-08, dated 16.10.2007 with CRN firm(A.2). The entire process of selecting PMC from beginning i.e. from the date of issuance of the notification up to issuance of LOA and execution of the agreement was done in most transparent manner by the institute. Consequent to selection and appointment of PMC and in consideration of the estimates given by the service provider, which were approved in the 11th BOG meeting dated 05.06.2007, on 06.08.007 the notice inviting pre-qualification of Principal Contractors for construction of halls of Residence for 1600 students (NIP) was issued. In response to the above, 8 firms submitted proposals for pre-qualification out of which 6 firms were selected for issuance of the tender documents as per the scrutiny note dated 27.09.2007 and subsequently 3 firms submitted financial bids and NCCL(A3) was declared to be L.1 and was awarded the work after successful negotiation on reduction of the quoted amount by 0.25% and Letter of Acceptance dated 18/19.07.2008 was issued to the successful bidder by the institute as approved in the 14th BOG meeting dated 18.07.2008. Consequent to issuance of LOA the Agreement No.40/2008-09, dated 18.08.2008 was executed by NIT, Warangal with NCCL.

7. The enforcement of agreement conditions rests with the mechanism, starting from the office of the Project Engineer, Faculty In-charge, Drawing Branch of the PE Office, Accounts Branch, Internal auditors, Deputy Registrar (Accounts), Registrar, Dean (P&D) and finally the titular Head, the Director. Sri N.Radhakrishna worked as Deputy Registrar (Accounts), was deputed from the office of CAG, Hyderabad. One Dr D.Ramaseshu, Professor, Department of Civil Engineering, who was having experience of working as Project Engineer

(i/ c) for three years at NIT, Warangal, was nominated as Faculty in charge for Ultra Mega Hostel (Hall of Residence for 1600 students) vide letter dated 17.01.2008 to supervise the works in all respects, including super check of measurements and signing the RA Bills etc. as Engineer In-charge and one Dr C.B.Kameswara Rao, Professor of Civil Engineering and Dean (Planning and Development), also worked as Project Engineer (i/ c) at NIT, Warangal was taking up the overall supervision of all the activities of the project. The then Project Engineer, Sri K.Janardhan Reddy and other officers were also being involved in various committees and all the activities of the project.

8. During the execution of the works by NCCL(A3) certain additional works were also assigned to the contractor in terms of the contract with prior approval of the BOG, items and sanction for the additional expenditure in terms of the contract and as recommended by the Service Provider and the Faculty in charge. The RA bills were paid to the contractor as forwarded by PMC and the faculty in-charge in terms of the contract and the works including the additional works were completed and handed over to the institute in terms of the contract and are being used by the institute and the work completion certificate dated 17.03.2011 was also issued by the Faculty in-charge to the contractor. While so, in the year 2010, an enquiry has been initiated against the petitioner by the Chairman, BOG, NIT, Warangal alleging certain irregularities in awarding the works to NCC, according promotions to the staff etc by the petitioner during 2005 to 2010 and consequent to issuance of charge memo dated 25.02.2011 by the in-charge Director of NIT, Warangal, appointed Justice V.Bhaskara Rao, Retired Judge of the High Court as Inquiry Officer. The petitioner impugned the same before the High Court and the High Court by order

dated 25.07.2012 in W.A.Nos.11534 and 1154 of 2011 in W.P.Nos.12756 and 15520 of 2011 directed status quo obtaining in all respects as on date to be maintained, in respect of the Inquiry Report submitted by the Inquiry Officer. While so, in the month of December, 2012, the Inspector, CBI, ACB issued notice to the petitioner requiring to appear before him in connection with case in PE3(A)/ 2012, dated 21.09.2012 with the allegation that during the tenure of the petitioner as Director, NIT, Warangal from 2005 to 2010 committed grave irregularities in inviting, short listing and awarding of contract relating to construction of Hostel for accommodation of 1600 students at NIT, Warangal to Project Management Consultant i.e. the service provided and the project contractors, violated the rules and guidelines of CPWD, CVC and MHRD, awarded the contract to NCCL at 41% above the estimated rates, awarded additional works and other irregularities. The petitioner appeared before IO and answered various questions put to him by IO and also submitted written explanation, duly justifying his actions as Director that are in conformity with the bye-laws of NIT, Warangal society, First Statutes of NITs made by the Government of India and as per provisions of NIT Act. On the basis of above crime and investigation charge sheet dated 06.11.2015 filed and learned Special Judge has taken cognizance for the offences supra also against the petitioner as A1. On receipt of summons in the calendar case from the Special Judge for CBI Cases, the petitioner came to know that the respondent has filed charge sheet dated 06.11.2015 against the petitioner and others supra for the offences referred supra and on perusal of the contents of either preliminary enquiry dated 21.09.2012 or FIR dated 28.02.2013 or charge sheet dated 06.11.2015, as basis for allegations made against the petitioner mainly revolves around the decision of the Government of

India to implement OBC Quota during the year 2006 to 2010 and the petitioner as Director of the institute committed irregularities in inviting, short listing and awarding of contract relating to construction of hostel with 1600 capacity at NIT, Warangal to the service provider and the contractor and thereby caused loss to the institute. The quash petition is filed impugning the same.

9. With the back ground of facts, the grounds urged in quash petition are as follows:

9(a). There is no offence much less the alleged offences mentioned in the Charge Sheet made out against the Petitioner.

9(b). The contents of the Charge Sheet on the face of it do not disclose commission of any of the offences and as such continuation of the prosecution against the Petitioner is clear abuse of process of law, which would result in miscarriage of justice apart from causing grave injustice to the Petitioner.

9(c). The Investigation Officer failed to appreciate the fact that the petitioner discharged his functions as the Director of the Institute as required under the provisions of the NIT Act, 2007 and the First Statutes of NITs 2009 on par with the policy decision of the Government of India for implementing the OBC Quota. The Petitioner cannot be subjected to criminal prosecution for having scrupulously implementing the decisions taken by the Institute, in due discharge of his functions as Director of the Institute.

9(d). The preliminary enquiry purported to have been done by the respondent before registration of FIR itself lacked fairness and honesty.

9(e). Non consideration of the material information furnished by the Petitioner at the time of preliminary enquiry by the Respondent and

suppression of such information in the charge sheet would clearly prove the unfair, non-transparent and biased investigation by Respondent.

10. It is contended that as per settled law, accused is entitled to fair and true investigation, which should be fair, transparent and expeditious to ensure compliance of basic rule of law, which are the fundamental canons of criminal jurisprudence and which are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India. Impartial investigation free from unfairness and bias is imperative and in the present case the investigation conducted by the respondent lacks fairness, transparency, honesty and legality as envisaged by Articles 20 and 21 of the Constitution of India and as such the accusations leveled against the Petitioner in the Charge Sheet dated 06.01.2015 are illegal, biased and based on personal views and perceptions of the respondent without any material as apparent on the face of the same and the learned Special Judge taken cognizance on the Charge Sheet for the alleged offences in a mechanical manner allotting C.C.No.10/ 2016, instead rejection of the charge sheet at the threshold, for contents of the Charge Sheet with statement of witnesses and annexed documents no way makes out any triable case against the petitioner for any offence and continuation of the post cognizance proceedings are unjust and abuse of process and liable to be quashed, for he discharged his functions as Director of the Institute by implementing the decisions of the Board of Governors and legality or otherwise of either the recommendations of various Committees involved at various stages of the tender process or the approvals given by the Board of Governors based on such recommendations not considered by the IO to fasten any criminal liability much less the alleged criminal offences against the petitioner

and as such the criminal prosecution against the petitioner based on the same would amount to gross abuse of process of law, the continuation of which would itself result in serious miscarriage of justice and hence, the Charge Sheet is liable to be quashed by allowing the quash petition.

11. In respect of the specific role of the Petitioner stated in the Charge Sheet under Para-62, the Petitioner submits that the allegation of the Petitioner entered into criminal conspiracy with A-4, Partner of A-2 and A-5, an employee of A-3, has no basis in the absence of any traceable evidence in support of the said allegation. Coming to the allegation of the petitioner dishonestly and in furtherance of said criminal conspiracy, implemented OBC quota in one go without assessing the work requirement, even though there is provision for implementing it in a phased manner and though there was a stay granted by the Supreme Court on 29.03.2007 against implementing the OBC quota equally concerned, the Respondent failed to consider the fact that there was no stay order of the Hon'ble Supreme Court by the date of issuance of the notification for Expression of Interest for Service Providers for Construction of Hall of Residence for a capacity of 1600 Students. The contention of the Respondent is that the Petitioner processed implementation of OBC Quota inspite there being stay order is absolutely false and baseless and copy of the Order of the Hon'ble Supreme Court dated 29/03/2007 is being filed herewith as Annexure P-16. The Respondent failed to consider that but for decision of the Government of India to implement OBC Quota neither the Institute nor the Petitioner has any role in implementing or not of the same on their own. The intention of the Government of India to implement OBC Quota in the year 2006 itself can be proved from the contents of the Priority Letter dated 26/10/2006 issued by MHRD to the NITs, directing to submit copy

of the DPR on priority basis, while confirming submission of the same to AICTE and Planning Commission earlier by the Institutes.

12. Coming to other contentions concerned:

12(i). It is also contended that the Respondent failed to consider the fact of Ministry of Human Resources and Development, Government of India given permission to NIT, Warangal, among other Central Education Institutes, to implement reservation in admission for the increased student intake by 54% by providing 27% reservations to OBCs as per the provisions of the Central Educational Institutions (Reservations in Admission) Act, 2006 and to expand the infrastructure of the NIT, Campuses vide Memorandum dated 20.04.2008, which if considered would have clearly proved and establish the fact that the decision to implement OBC Quota was neither that of the Petitioner nor the Petitioner was the authority to implement the same and as such the allegation of criminal conspiracy as alleged in the Charge Sheet has no basis at all. A copy of the said Office Memorandum dated 20/ 04/ 2008 is being filed herewith as Annexure P-17.

12(ii). The other contention is that Respondent failed to consider the information furnished in the Detailed Project Report (revised) (Annexure P-3) submitted by the Institute for implementation of reservations for OBCs and capacity expansion, in compliance of the directions of MHRD, which clearly reveal the fact not only regarding the ongoing construction of two hostels, with capacity of 200 and 1000 but also the proposal for construction of one more hostel with a capacity of 1600 with allotment of Rs.6000 Lakhs to the Institute by Letter No. F21-12/ 2007-TS. III dated 24/ 04/ 2007 (Annexure P-5) of MHRD, considering the budget estimates submitted by the institute for the years 2007-2008 by the Institute to address the proposed increase of 54% to implement

reservation for OBC. The Respondent also failed to differentiate the role of the Petitioner in representing the Institute as Director of the Institute and role in entering contracts on behalf of the Institute either under the provisions of the NIT Act, 2007 or the MOA of the Society or the First Statutes of NITS.

12(iii). The other contention is that the Respondent on one hand contends of the Petitioner initiated process for implementation of OBC Quota inspite of there being stay and on the other hand contends of the Petitioner implemented OBC quota in one go without assessing the work requirement dishonestly, even though, there is provision for implementing it in a phased manner, which inconsistency would render the charge sheet as outcome of an unfair and suspicious investigation without proper application of mind.

12(iv). It can be clearly ascertained from the contents of the Charge Sheet that the main ingredient of the alleged offence under Section 120 B IPC is meeting of minds between the accused in order to commit an illegal act, which is mandatory requirement to sustain charge under said offence that is not made out and further, the contents of the Charge Sheet on the face of it do not reveal specific role, much less any role, played by the Petitioner for being charged under the alleged offence of criminal conspiracy. In the absence of any prima facie material regarding the involvement with specific role of the Petitioner in the alleged conspiracy with co-accused to commit an illegal act and further evidence as to how the parties in furtherance of such conspiracy succeeded in committing the illegal acts and thereby benefited themselves, the Petitioner cannot be charged for the offence under Sec. 120B IPC. Further since, the contents of the Charge Sheet are conspicuously silent on the point as to how the Respondent has come to

a conclusion that the acts of the Petitioner amount to criminal conspiracy, the charge under Section 120B IPC deserves to be quashed on this ground also.

12(v). With regard to the irregularities in the selection of Service Provider alleged in Para-63 of the charge sheet, the Petitioner submits that the Respondent has failed to consider the facts that the selection of Service Provider from the very issuance of the Notification to issuance of the LOA/ Agreement as per the recommendations/ approvals of the screening committee for short listing of the prospective bidders, Buildings and Works Committee and the Board of Governors as per the provisions/ rules under the NIT Act, 2007 and the Memorandum of Association of the Society. The Respondent failed to appreciate the fact that it was the collective decision of the Selection Committee consisting of the Dean (Admin), the Registrar, Dean (P&D), Asst. Professor, CED and Resident Engineer, which upon consideration of the conceptual designs submitted by the three short listed firms selected A-2 firm on priority basis, which was subsequently awarded the LOA with the approval given in the 8th BWC Meeting dated 27.05.2007 and 11th BOG Meeting.

12(vi). With regard to the allegation of awarding contract to Nagarjuna Construction Company Limited dishonestly by the Petitioner with intention to cheat the Institute alleged in Para-64 of the Charge Sheet, the Petitioner submits that Respondent has failed to consider the fact that the approvals with regard to the estimates, awarding of contract etc. were duly given by the BWC, Finance Committee and the BOG. The Respondent failed to consider the fact that the agenda notes were prepared and placed by the Registrar, in the capacity of Member Secretary before the BWC, FC and BOG, in connection with the estimates, issuance of tender, short listing of the eligible contractors,

awarding of the tender to L-1 etc. and not by the Petitioner. Further, since, the nominees of CPWD and MHRD did not raise any objection with regard to said agenda notes in the respective meetings, the allegation of dishonest intention on the part of Petitioner to award the contract to Nagarjuna Construction Company with intention to cheat has no basis.

12(vii). With regard to the allegation of incorporating Clause 32 of Conditions of Agreement with the connivance of A-2 and entrusting entire responsibility to private firm including check measurement and super check measurement without involving professional engineers from department side as alleged in Para-65 of the Charge Sheet, the Petitioner submits that the said allegation has no basis since, the Respondent failed to consider the fact of involvement of experienced officers of the Institute to ensure proper enforcement of the agreement conditions starting from the office of the Project Engineer, Faculty In-charge, Drawing Branch of the PE Office, Accounts Branch, Internal Auditors, Deputy Registrar (Accounts), Registrar, Dean (P&D) and finally the titular Head, the Director and hence, the guidelines that were in vogue during the relevant period were duly complied by the Institute. Further, in the absence of any material in the Charge Sheet about the involvement of the Petitioner as Director of the Institute either in recording the measurements or submitting inflated RA Bills and thereby receiving wrongful gain to themselves and corresponding loss to the Institute, the allegation of the Respondent is wholly baseless.

12(viii). With regard to the allegation of facilitating A-2 to commence the work even before entering into an agreement with the Institute, as alleged in Para-66 of the Charge Sheet, the Petitioner submits that the said allegation has no basis since, the Respondent failed to consider the fact the Letter of Acceptance was issued to the PMC on

07/08.05.2007 itself as approved by the 11th BWCs and in view of the approval of the preliminary estimates for the Hostel with 1600 capacity as submitted by the A-2 was approved in the 11th BOG Meeting on 05.06.2007. The Institute also entered in to an Agreement No.64/ 2007-08 dated 16.10.2007 with the Service Provider. The further allegation of the Respondent with regard to the tender condition enabling rejection of tender which are above 5% of the estimates equally has no basis since, the contractors were asked to quote the rates "sacrosanct". The rates quoted by the contractor were duly considered by the BWC, FC and BOG to ascertain their justifiability in terms of the contract apart from considering the rates at which the other works were awarded by the Institute either to private contractors or to CPWD itself. The Respondent has failed to ascertain the above fact in spite of the information regarding the same was furnished by the Petitioner or available very much with the Institute and the CPWD. In the absence of any objection being raised by the members of the respective committees, especially the nominees Of CPWD and MHRD the allegation of finalizing and awarding the contract to L-1 at the rate above 41% over the estimated rates shall be deemed to be in accordance with the tender condition.

12(ix). With regard to the allegation of the Petitioner was making payment of bills without passing orders/ recommendations and scrutiny at the Measurement Book stage and the process adopted for payment of bills and short recovery of VAT, alleged in Para-67 of the Charge Sheet, the Petitioner submits that said allegation has no basis since, the Petitioner released the payment in terms of the contract and as recommended by the Faculty I/c and the accounts department, which the Respondent failed to consider. The Respondent also failed to consider the fact that the VAT was recovered @2.8% based on the

Circular dated 12/ 09/ 2007 issued by the Professor I/ c, Engg. Unit, duly enclosing Memo dated 19/ 07/ 2007 and as such the Petitioner had no role in connection with the same. A copy of the said Circular along with the Memo is being filed herewith as Annexure P- 18.

12(x). The Respondent further failed to consider the fact that the construction of the second floor over SRIC building was executed through the Contractor at the contract item rates and as a part of the Hall for 1600 students, i.e., as the extra BOQ items in the Hall for 1600 students, as approved in the 15th BOG meeting dated 22.04.2009. If at all the same was contrary to any rules and regulations the members, including the nominees of CPWD and MHRD would have opposed the same and as such the same cannot be attributed to be the decision of the Petitioner.

12(xi). The Respondent failed to differentiate the role of Petitioner in discharging his duties as Director of the Institute, in compliance of the decisions of the Board of Governors, in respect of the contracts entered by the Institute and projected the entire case in such a manner that the Petitioner is the only independent authority responsible for management of the Institute, empowered to take decisions on behalf of the Institute and also in implementing OBC quota as alleged in the Charge Sheet. The Respondent failed to consider the fact that management of the Institute vests with the Board only and all the contracts for and on behalf of the Institute shall when authorized by a resolution of the Board passed in that behalf be in writing and be expressed to be made in the name of the Institute and every such contract shall be executed on behalf of the Institute by the Petitioner as Director, the Director shall not be personally liable in respect of anything under such contract. It is not the case of the Respondent that Petitioner acted contrary to the decision of the BOG to gain wrongfully

for him or to cause wrongful loss to the Institute. Since the Petitioner acted as per the decisions of the BOG, fastening him with criminal overt acts as alleged in the Charge Sheet is nothing but abuse of authority by the Respondent.

12(xii). The other contention is that the work awarded was by the Institute and it was the civil construction work, governed by several clauses mentioned in the Agreement, the procedure that was being followed by the Institute in respect of the other construction works undertaken by the Institute in the campus has been once followed in the work of construction of hostel with 1600 capacity also and the additional works were executed in terms of the contract and with recommendation of the concerned in-charge duly justifying the BOQ Items and rate analysis, the Officers of the Institute along with the Service Provider are engaged in the supervision of the works apart from an experienced faculty member being assigned with the duty of overall supervision of the respective construction work the petitioner cannot be fastened with criminal liability, that too when it is not the case of the Respondent that Petitioner had direct involvement of any kind in the construction activities that were undertaken during the years 2005-2010 at the Institute. Further, it is also not the case of the Respondent that Petitioner is benefited by unlawful means while discharging his duties as the Director of the Institute during the relevant period, so as to attract charge under Sections 13(2) & 13(1)(d) of the Prevention of Corruption Act, 1988, for nothing showing any acts of the petitioner as public servant, involved in any corrupt or illegal means to obtain for himself or for any other person any valuable thing or pecuniary advantage by abuse of his position as a public servant without any public interest, in the process of implementing the decisions of the BOG. It can be clearly

noted that under the First Statutes of NIT's, the Petitioner in the capacity of the Director of the Institute, shall not be personally liable in respect of every such contract executed by him on behalf of the Institute being duly authorized by a resolution of the Board.

12(xiii). The charges under Sections 420, 468 and 471 of IPC are equally baseless for the reason that the Petitioner was never involved in either preparation of the RA Bills or certifying the same for payment. Further, it is not the case of the Respondent that the Petitioner never involved in forging of any documents and used any such documents as genuine for wrongful gain for him or to deceive the Institute.

12(xiv). Further, the Petitioner sincerely understand and believes it to be true that the final bill of the contractor is not settled so far and as such any alleged excess payment due to discrepancy in recording the measurements in the Measurement Books made to the contractor can be recovered by the Institute in terms of the contract.

12(xv). The other contention is that Respondent failed to consider the circumstances that necessitated for change of the cement to Maha Brand, without deviating from the quality aspects of the product, keeping in view of the progress of the work. The recommendations made by the Faculty I/ c for change of the cement brand duly considering the circumstances necessitated for such change, would clearly reveal that the Petitioner had no role at all in changing the brand as alleged by the Respondent and as such no malafides can be attributed to the Petitioner in this regard. The copies of the other minutes of the meeting along with the recommendation by the Faculty I/ c are being filed herewith and marked as Annexure P-19.

12(xvi). The Respondent suppressed the information submitted by the petitioner regarding the works awarded by the CPWD itself at the

excess rate ranging from 35%to 176%to the investigating agency at the time of preliminary enquiry and charging of service charges @ 7% towards services rendered by CPWD in connection with construction of DASA Hostel with 200 capacity in the NIT, Warangal Campus itself, which upon consideration, justified the selection of the PMC and awarding of the work to L!. by the Institute.

12(xvii). The principles of fair investigation not only demand collection of relevant information by the investigating agency but also fair consideration of such information, either revealed or collected during such investigation, in arriving at the conclusion in unbiased manner, either by assessing such information in the context of the allegations against the accused persons or correlating the identical facts/issues that are found to be common in nature under such information gathered from different sources by the Investigation Agency. If the above principle is applied to the present case, the allegations leveled in the Charge Sheet against the Petitioner by the Respondent has no basis, especially in respect of selection of PMC and awarding the work to L-1 at excess rate, since the Respondent has not placed any material to justify the payment of service charges @7%to CPWD and awarding of various works by the CPWD itself at the excess rate ranging from 35%to 176%

12(xviii). In view of the above the contention is that entire investigation by the Respondent was conducted in most unfair and non-transparent manner, without proper appreciation of material information revealed or collected during the investigation and as such filing of Charge Sheet based on such tainted investigation deserves to be quashed as opposed to the principles of fair investigation. That keeping aside all the above, the fact remains that subject Hostel Building and

other Constructions are being fully utilized by NIT, Warangal from 05/02/2011 i.e., from the date of taking over the same from the contractor. The entire issue is an outcome of the external involvement of local politicians, who were always trying to interfere with the affairs of the Institute with ulterior motives. Unfortunately, the investigation agency, which is required to conduct investigation in a fair, transparent and unbiased manner, deviated from the settled principles of impartial investigation by resorting to unfair practice.

12(xix). The contents of the Charge Sheet, prima facie do not disclose commission of any of the alleged offences, under Sections 120B r/w 420, 468 & 471 IPC and 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 against the Petitioner and thereby it is a fit case for exercising inherent power under Section 482 of Cr.P.C by the Hon'ble Court to protect the Petitioner from undergoing the agony of criminal trial, which tantamount to gross abuse of process of law and sought therefrom quashing of the Charge Sheet dated 06.11.2015 filed in C.C.N010/ 2016 in RC 03 (A)/ 2013-CBI/ ACB/ HYD (NIT Warangal case) for offences supra and the cognizance orders of the learned Special Judge.

13. The counter filed by the respondent/ CBI in opposing the quash petition are that the petitioner/A1, the then Director, NIT, Warangal, M/s C.R.Narayana Rao, Project Management Consultant, Chennai, M/s Nagarjuna Construction Company Limited, Madhapur, Hyderabad and unknown Public Servants and private persons for causing crores of rupees as wrongful loss to the Government exchequer on the investigation revealed that the petitioner/A1 has entered into a criminal conspiracy with C.N.Srinivasan-A4, Partner of PMC, M/s CRN-A2 and Sri H.C.Dwivedi-A5, DGM of M/s NCCL-A3 and in furtherance of said criminal conspiracy, though there was a stay for implementing OBC

quota by the Apex Court on 29.03.2007, Prof. Y.V.Rao-A1, Director, NIT Warangal implemented OBC quota in one go without assessing the work requirement dishonestly. Even though there is provision for implementing it in a phased manner and he paid bills to M/s NCCL-A3 without pass orders/recommendations and in the process he caused a wrongful loss to NIT Warangal to the tune of Rs.16,41,67,322/- i.e. Rs.15,35,49,832/- on the payments made towards construction of 1600 halls and 2nd respondent over SRIC building plus Rs.1,06,17,490/- towards non-remittance of 1.2% of VAT on the payments made so far, to works account of NIT, Warangal and corresponding wrongful gain to A2 to A5.

In response to the quash petition averments, the respondent submits as follows:

13(i). In reply to para no. 1 to 9, it is submitted that it is a matter of record hence needs no specific reply.

13(ii). In reply to para 10 to 15 it is submitted that as per the Clause 14(2) of MOA and Rules as shown in Annexure-P2 specify that "The Director shall be the Principal Academic and Executive Officer of the Institute and shall be responsible for the proper administration of the Institute i.e. NIT Warangal, hence the contention of petitioner that the Board/institution is only responsible for any decisions, but not Director of NIT (W), is not correct.

13(iii). The contention of the petitioner at para no.16 that the Management of the institute is done by the Board and all contract for and on behalf of the Institute shall when authorized by a resolution of the Board passed in that behalf be in writing be expressed to be made in the name of the institute and every such contract shall be executed on behalf of the Institute by the Director, but the Director shall not be personally liable in respect of anything under such contract cannot absolve him from prosecution as he violated the norms of CPWD & CVC in executing the works and payment of bills by bypassing the instructions of MHRD.

13(iv). In reply to para no. 21 it is submitted that as relied upon by the petitioner, Annexure-6 casts responsibility on petitioner also that the distribution of allocation may be made under different standard heads and intimate the same to the MHRD. Similarly, month-wise cash flow statement for both plan and non plan has to be prepared and furnished for proper monitoring of the expenditure by the concerned ministry.

13(v). In reply to para no.22, it is submitted that the notification Annexure-P6, for expression of interest for Service provider for construction of hall of residence for a capacity of 1600 Students dated 23.02.2007 is a matter of record hence need no reply.

13(vi). In reply to para no.23 it is further submitted that the Annexure-P8 is the letter addressed to Petitioner/ A-1 updating that seventeen companies have sent their profiles expressing their interest and the Petitioner/ A-1 was sought to constitute a committee to scrutinize and shortlist the profiles of the Companies. The letter dated 24.03.2007 which forms part of Annexure-P8 addressed by Petitioner/A-1 confirms that the planning and execution shall be as per the proposals of the Director, National Institute of Technology, Warangal.

13(vii). In reply to para no.24 it is submitted that the scale of charges are prescribed at clause 8 of Annexure-P.10, Agreement dated 16.10.2007 and as per the Agreement PMC services, Accused No.2 would only be entitled to Rs.1,18,97,561 @ 1.4% on contract value of Rs. 84,98,25,796/- but A-2 represented by A-4 submitted bills for Rs.1,49,08,026/- in connivance and conspiracy with A1, A-3 & A-5 resulting in wrongful loss of Rs.30,10,525/- to National Institute of Technology, Warangal. As per Annexure-P.9 the letter dated 7/8-5-2007 petitioner/accused no.1 confirmed to conclude the agreement at the earliest but not later than 22.05.2007, but the Agreement was found to have been entered on 16.10.2007.

13(viii). In reply to para no.25 the respondent submits that entire selection and process was not in confirmation with the procedure to be followed by the petitioner/ accused as the petitioner/ accused grossly failed to follow the CVC guidelines and CPWD Rule 19.4.32 in addition to not following the procedure as per Sec.2.3 of Manual on Policies and

Procedure of Employment of Consultants. The petitioner/accused had also eliminated competition among few pre-qualified bidders.

13(ix). In reply to para no.26 it is further submitted that, as relied up on by the petitioner/accused on Annexure-P11 the Estimate Cost of Project was only Rs.62.00 Crores, but the bills worth Rs.102.60 Crores submitted by A-3 goes to prove that there was no cost implication worked out by Petitioner/A-1 to check undue benefit to the Contractor-A-3.

13(x). In reply to para no.27 it is submitted that M/s. Lanco Infratech Ltd., was ineligible/disqualified and all other companies including Consolidated construction consortium Ltd., and Ramky Construction company were eligible. Though Lanco was not eligible, they were made eligible. On the other hand M/s.Consolidated Construction consortium and M/S Ramky were ineligible with a view to prevent healthy competition which may lead a way for cartel formation among the remaining firms. The six shortlisted firms except M/S Maytas, the remaining five firms purchased tender documents and attended the pre-bid conference. Out of 5 firms only 3 firms i.e., M/s. IVRCL, Lanco & M/s.NCCL-A-3 submitted their tender documents within due date i.e., 30.05.2008. The contract was awarded to A3 for an inflated rate, which being 41.18 % more than the estimated cost. A-1 in connivance and in conspiracy with A2 & A3 violated the tender conditions in the tender documents as to that any bid which was above 5% of the estimate would be rejected.

13(xi). In reply to para no.28 it is submitted that the Director is the person who is the signatory to all the correspondence in relation tender documents and conditions stipulated therein, moreover he being the person who participated in all the meetings cannot be absolved from his liability under the guise that other members also participating in such meetings.

13(xii). In reply to para no.29 & 30 it is submitted that though Mr.Pamaseshu, professor was the faculty in charge as per the letter dated 14/ 17.01.2008 addressed by Petitioner/ A-1, Dr.C.B.Kameshwara Rao and Mr.K.Janardhan Reddy being the Project Engineers involved in various committees, the ultimate responsibility and control over the project rests with the petitioner/accused No. 1 being the Director of

the NIT, Warangal, as the project works took with A2, A3, A4 & A5 at his instance.

13(xiii). In reply to para no.31 it is submitted that as the contractual works awarded for Hall of Residence for 1600 students is itself in violation of the tender conditions, rules and regulations the awarding of additional works incurring additional expenditure will not absolve A-1 from the liabilities.

13(xiv). In reply to para no.32 it is submitted that as per the valuation of District Valuation Officer the bills claimed by A-3 for Rs.102.60 Crores but whereas bills Rs.88.47 was only paid and no decision was taken for remaining Rs.14.2 Crores. As per District Valuation Officer Rs.73.12 Crores would be the cost of Construction of above works, but Accused No.3 claimed an excess amount of Rs.29.48 Crores. As per the District Valuation Officer Rs.7.50 Crores worth of work were done with poor quality material. The statement of Shri.Ramaseshu under 164 CrPC before the Hon'ble IX ACMM, Hyderabad confirmed passing of bills by A-1 to A-3 which were originally received from A-4 on behalf of A-2.

14. In reply to para no.33 to 39 respondent submits that the contents referred to therein is a matter of record and need no specific reply.

14(i). In reply to para A of grounds under reply it is submitted that the charge sheet primarily discloses a prima facie case against all the accused as all the accused played their respective roles in gaining wrongfully for themselves and causing corresponding wrongful loss to the public exchequer by means of claiming the Bills without particular measurements and periodical checks as per the requirement for the works undertaken. More particularly the petitioner/accused no. 1 played a vital role in awarding the contractual works in connivance with A2, PMC by incorporating clause 32 of Conditions of Agreement dated 18.08.2008, entrusting the entire responsibility on A2 a private firm, in violation of CVC guidelines dated 25.11.2002, due to which wrong recording of measurements in measurement book showing inflated bills was committed.

14(ii). In reply to Para B it is submitted that mere discharging of functions in capacity of Director, NIT, Warangal would not absolve the petitioner/ accused from his liabilities as there is a bounden duty cast up

on him as a responsible public servant who need to follow the Rules, Regulations and guidelines as prescribed under CVC guidelines and CPWD rules.

14(iii). In reply to para C it is submitted that the respondent had investigated into the offence under due fairness and honesty. The various materials that had been collected during the investigation along with statements of different witnesses is submitted before the Hon'ble Special Judge for CBI cases and the same was taken on record while taking cognizance as there is a prima facie case against the petitioner/ accused.

14(iv). In reply to para D, E & F it is submitted that the respondent had followed due procedure prescribed under law and conducted fair and impartial investigation in to the matter. The statement of Witnesses LW-4 K.Janardhan Reddy, LW-5 L.Krishnanand, LW-18 G.Venkat Reddy along with the relevant documentary evidence reveal about the role played by petitioner/ accused no.1 in awarding the contractual works to A-3. The Hon'ble Special Judge having taken in to consideration of all the aspects and material evidence available on record and taken cognizance of the offences.

14(v). In reply to para G it is submitted that Hon'ble Special Judge, having gone through the charge sheet and having considered the statement of witnesses along with relevant documents had took cognizance as there is prima facie case made out against all the accused and more so the matter need to be further tried in order to elucidate the offences committed by the accused.

14(vi). In reply to para H & I it is most respectfully submitted that the discharge of functions by petitioner/ accused no.1 as a Director of NIT, Warangal in violation of tender procedure and while awarding of contractual works to A2 & A3 was very specifically prescribed in the charge sheet at clause 62 to 68. The irregularities and illegalities committed by the petitioner/ accused while approving the above works is a matter of trial which will come to light after leading the evidence under different aspects before the trial court.

14(vii). In reply to Paras J& K, the respondent submits that the averments made therein is a matter of record which needs to be decided at the time of trial hence needs no reply.

14(viii). In reply to Para L, it is submitted that release of funds for implementing OBC quota does not in any manner confers any absolute right on the petitioner/accused to violate the rules and regulation thereby causing undue favour to A2,A3,A4 & A5 and further gaining unlawfully for themselves and to cause wrongful loss to NIT, Warangal.

14(ix). In reply to para M & N it is submitted that giving permission to NIT, Warangal in addition to other Central Educational Institutes for implementation of OBC quota is a matter as per the Central Educational Institutions (Reservation in Admission) Act, 2006 which of purely in administrative in nature, but short listing of firms and calling for bids by excluding and disqualifying the other competing firms clearly establishes the malafied act of A-1 in league with other accused while awarding the works to A3 through A2. The proposal for construction of Hostel with capacity of 1600 will not give any absolute right to Petitioner/ A-1, for violating CPWD & CVC rules and regulations so that he can award the works to the contractor of his own choice facilitating to gain wrongfully for themselves and to cause corresponding wrongful loss to Government.

14(x). In reply to para O & P it is submitted that the investigation revealed that A3 in connivance with Petitioner/ A-1 has emerged as L1 who quoted Rs.89,36,09,331/- which is 49% excess over the estimated rates. Subsequently the quotations were revised by A3 on 22-06-08 to Rs.85,19,15,621/- and A-3 further allowed discount of 0.25% and their quote was Rs.84,97,85,832/- which was placed before 11th meeting of BWC on 18.07.2008. At the instructions of petitioner/ A-1, the revised estimates were approved in the same BWC (Building and Works Committee) on 18.07.2008 and tenders were also approved in the same BWC as item no.4 & 5 respectively. BWC, FC and BOG approved the quote of A-3 and passed resolution accordingly at their respective meetings. Thus A-3 was selected and an agreement was executed by A-1 on behalf NIT, Warangal on 18.08.2008. The petitioner/accused has awarded contract to A-3 in order to make undue favour to A-3 more than the estimated rate. Accused no.2 in connivance with Accused no.1 violated conditions in the tender documents that any bid which was above 5% of estimate would be rejected. Thus knowingly well the contract was awarded for an inflated quote of A3 by the Petitioner/ A-1.

Awarding the contractual work without following tender conditions and formalities as required under rules and regulations and awarding of the works to the firm of his choice will not be construed to be implementation of policy decision of Govt., of India but in fact such violation resulting to wrongful loss to the public exchequer and causing corresponding wrongful gain to themselves is a matter of grave concern.

14(xi). In reply to para Q & R it is submitted that the execution of contract by violating the tender norms and awarding the works unilaterally at an inflated rates and non following of measurements and periodical checks by A-1, A-2 & A-3 goes to prove the complicity of all the accused in connivance with one another as all of them are parties to such works awarded unduly at an inflated rates and bill so passed.

14(xii). In reply to para S it is submitted that the mere selection of A-2 itself had been made without procedure established under the tender norms and conditions and more so the petitioner/ accused being one of the selection committee member who formed committee, has got utmost responsibility to save the institution from any pecuniary loss, mis-management and criminal misconduct of such nature.

14(xiii). In reply to para T it is submitted that non raising of any objection by CPWD & MHRD on agenda notes placed by Registrar before BWC, FC & BOG in connection with estimates will not in any manner give legal right to the petitioner in committing such violation of norms, rules and regulations as prescribed.

14(xiv). In reply to para U it is submitted that involvement of other staff and other officers in the above process does not give any absolute powers on Petitioner/ Accused-1 as a matter of right to enter in to an agreement incorporating certain changes and similarly non obligation of certain tender conditions and incorporation of Clause 32 by petitioner/ accused who being the signatory to the Agreement has to duly consider the other participants in such tendering process to maintain healthy competition. Since the petitioner failed to have control over such mismanagement and he being the main person in forming the committee before entering into an agreement and he being the signatory to the Agreement his role in commission of above offence cannot be absolved saying that he has no knowledge of the same.

14(xv). In reply to para V it is submitted that in absence of any objection being raised by the members of the respective committees,

especially the nominees of CPWD and MHRD the allegation of finalizing and awarding the contract to L-1 at the rate above 41% over the estimated rate shall be deemed to be in accordance with the tender condition cannot hold good as admittedly petitioner/ accused confirmed that the Agreement was entered by the Institute and Petitioner/ A-1 being the Director of the Institute who signed in agreement has to carefully follow the rules and guidelines as prescribed under CPWD norms and Tender Conditions, without leaving any scope for such mis-management or undue favour to private contractors of his own choice.

14(xvi). In reply to para W & X it is submitted that one of the witness Mr.Gangadhar, AE, CPWD along with another witness Mr.G.Venu, JE, CPWD had conducted the verification of physical measurements in 1600 hall of residence and submitted the report. The above witnesses are able to reveal that they could only verify the items worth Rs. 19,85,29,292/- as claimed by A3 as no measurement were done for the works worth Rs.60,54,952/-. The discrepancies found in the physical measurement for Rs.19,85,29,292/- in comparison with the final bill show that there is excess claim of Rs.1,47,33,538/-. Similarly there is difference of Rs.60,54,952/- in comparison with the measurement in the manual measurement book for the said verified amount of Rs.19,85,29,292/-. As far as sanitary and water supply items are concerned, shri Gangadhar A.E could verify items worth Rs.42,80,626/-. For these items, there is excess claim of Rs.54,639/- was found in comparison to the items verified with the final bill and those final bills were paid by the petitioner/ A-1 and caused wrongful loss the Government exchequer.

14(xvii). Further, in reply to para X it is submitted that the said memo dated 19.07.2007 was issued to clarify the deduction of VAT from the contractors to prevent undue enrichment of the tax by the work executing agency. It envisages that the contractor who opted composite scheme, VAT as to be deducted @4%on entire value of work. From the contractor who had not opted for composite scheme, 2.8% has to be recovered which will be accounted for commercial tax department towards VAT and remaining 1.2%has to be accounted for works of NIT, Warangal whereas in the Agreement 4%of VAT recovery was provided which means 1.2%has to be recovered from each bill of claim towards works account of NITW, and 2.8% has to recovered towards VAT.

Only 2.8% recovery of VAT from the R.A bills was made but 1.2% was not made towards works account of NIT, Warangal. The above acts, on behalf of A-1 shows connivance of A-1 with A-3 in not deducting 1.2% towards account NITW, in order to cause wrongful loss to Govt Exchequer and to cause wrongful gain for themselves.

14(xviii). In reply to para Y it is submitted that when the other contractor who is already doing the works at lesser rate, the awarding the work of constructing second floor over SRIC building without calling for any tenders, and awarding the same at higher rates to A-3 definitely goes to prove the mala-fides played by A-1 in conspiracy with A2, A4 & A3, A-5.

14(xix). In reply to Para Z to EE it is submitted that there is a prima facie case against the petitioner/ accused no.1 who being in the capacity of Director had played vital role in all key correspondence with the other accused and moreover he signed on the agreement entered with contractor and while doing so the below irregularities have been committed which goes to establish prima facie case substantiating the material available on record and the statements taken on record.

14(xx). The following are serious Irregularities done by A1 in furtherance of criminal conspiracy in order to facilitate wrongful gain to A2 to A5, with loss to exchequer:

- 1) Entire process of Awarding the work & Execution of work done without involvement of professional engineers- Totally relied up on private consultant and private contractor- Done with mala-fide intention to willfully facilitate the private individual.
- 2) No test checking of works and any measurements
- 3) Over payments made due to excess measurement of quantities of various items.
- 4) Laboratory testing no done for material by independent Laboratory
- 5) No cost implication worked out- to check undue benefits to the contractor.
- 6) Appointment of Consultant was arbitrary
- 7) Selection of Contractor-Eliminated healthy competition among few pre-qualified Builders.
- 8) Receipt of High rated Tenders-Resulted in consequent loss to Govt Exchequer

9) Tender Acceptance Procedure followed in violation of CVC guidelines and CPWD Rule 19.4.3.2.

10. Losses:

- a) Bills claimed by NCCL (A-3) - Rs. 102,60,62,211-00
- b) NIT (W) has so far paid - Rs. 88,47,90,820-00
- c) Whereas actual cost as per valuation report the construction value was Rs. 73,18,72,100-00.
- d) Therefore the NIT(W) so far has paid excess amount of Rs. 15,29,18,720/- and the total loss would be Rs. 29,41,90,111/- against the total bill of Rs. 102,60,62,211/- claimed by NCCL(A-3)
- e) Apart from above loss due to less recovery of VAT is Rs. 1.23 Crores

14(xxi). In reply to para FF to NN it is submitted that the charge sheet very clearly reveals the role played by the petitioner/ Accused no. 1 in selecting A-2, violating CPWD Manual, MHRD guidelines and Memorandum of Association of NITW. Petitioner/ Accused No.1 did not obtain Administrative approval, expenditure sanctions from Board of Governors and finance committee before placing the project with BWC for Technical sanction. Petitioner/ Accused with a criminal intention, abused his official position in order to cheat NIT, Warangal and asked the committee to not to consider other financial bids of two shortlisted PMCs. A-1 considered disqualified company as qualified and qualified companies as disqualified in order to avoid healthy competition. Petitioner/ accused, in connivance and conspiracy with A2 incorporated clause 32 to the conditions of agreement dated 18.08.2008 and left the entire control on A-2, whereupon A-2 in violation of CVC guidelines dated 25.11.2002 along with A-3 could record wrong measurements in the measurement book and submitted inflated bills in order to gain wrongfully and to cause corresponding wrongful loss to NITW.

14(xxii). Further petitioner/accused by incorporating Clause 32 in the agreement had entrusted all the powers on A-2 resulting in gross violation of CVC guidelines.

14(xxiii). The petitioner accused having knowledge of such gross violations committed by A-2, A3, A4 & A5, under his control as a Director of the Institute, for the works awarded without following due procedure as prescribed and more so the manipulations in the measurement books

resulted in huge claim under R.A.Bills is liable for offences U/ s. Sec. 120-B, 420, 468 & 471 of IPC R/ w. Sec. 13(2) & 13(1)(d) of P.C. Act, 1998.

14(xxiv). For the aforesaid reasons and also for the reasons to be urged at the time of hearing, it is therefore prayed that this Hon'ble court may be pleased to dismiss the petition filed by the petitioner U/ s. 482 of Cr.P.C in the interest of justice.

15(a). The learned counsel for the petitioner/ A1 who besides reiterated the quash petition contentions supra, also contended further that there is no any proceedings of sanction for sustainability of the prosecution and same can be raised by accused at any time and the Court is bound to consider this aspect which goes to root of the matter, besides none of the offences that attract against the petitioner-A1 and the criminal case post cognizance proceedings of the learned Special Judge are liable to be quashed.

15(b). The learned Special Public Prosecutor representing the respondent/ CBI who reiterated the counter contest supra, also contended further that there is criminal conspiracy and the petitioner-accused is main privy to benefit the other accused and to cause loss to the Government exchequer and all the offences that attract prima facie and the investigation is fair and there is nothing to quash the cognizance proceedings and so far as contention of requirement of sanction for prosecution concerned, it all depends upon facts of each case and it no way requires for the offences under PC Act having admittedly retired by the time cognizance taken by the learned Special Judge and so far the IPC offences concerned the acts of the accused-petitioner are under the purported discharge of official duty by abused the position as public servant and not entitled to the protection though otherwise sanction required even after retirement for IPC offences and as it is a mixed

question of fact and law and cognizance already taken, it is premature to go into in the quash petition but for left open any such defence that can be raised by accused during trial to consider by the trial Court and once the offences prima facie from the investigation material attract against the petitioner-A1, there is nothing to quash the criminal case pending at the post cognizance proceedings stage on the file of the learned Special Judge and thereby sought for dismissal of the quash petition.

15(c). Heard both sides as referred supra and perused the quash petition grounds urged, charge sheet and the enclosures filed along with the quash petition, additional material and written submissions in support of respective detailed arguments with rival contest of both sides with reference to the material on record supra and by drawing attention to several judgments.

16. In deciding the quash petition as to whether the petitioner is entitled to seek quashment of entire cognizance order of the learned Special Judge for the offences referred supra against the petitioner as A1 concerned, the charge sheet from paras 60 to 68 mentions the so called role of the petitioner/ A1 among 5 accused which was referred supra. It is to be considered on undertaking discussion later with reference to the facts.

17. Before coming to the disputed factual aspects supra on the application or not of the several penal provisions against the petitioner under IPC and PC Act, coming to the exercise of inherent powers under Section 482 CrPC by High Court and its scope in a quash petition at post cognizance stage concerned, the High Court can evaluate the material on record to the prima facie satisfaction of existence of grounds for framing charges and proceeding with trial or not and nothing beyond

other than to consider therefrom as to continuation of the proceedings otherwise tantamounts to abuse of process or ends of justice required to quash the proceedings. Same is also held at para 10 of State of H.P. Vs Kishan Lal Pardhan¹ and at para 55 of Mariya Anton Vijay, that Court in a quash proceeding under Section 482 CrPC, is required to evaluate the material and documents on record, with a view to find out from its face value whether disclosing existence of ingredients of the alleged offence or not and the guidelines of the Apex Court in State of Harayana and Others Vs. Bhajan Lal² of one of the guidelines for quashing of the proceedings speaks (No.6 of the 7 guidelines) from any legal bar engrafted by any provision of the Code or other Act concerned to the institution or cognizance or continuation of the proceedings and sanction is such a bar if required. The requirement or not of sanction for prosecution is one of the considerations herein thus to decide.

18. Coming to consider the requirement or not of sanction for prosecution, the petitioner was admittedly retired from service as Professor in the early 2013 while working at NIT, Karnataka and prior to that he worked as Director, NIT, Warangal during 2005 to 2010; which are under the control of Ministry of Human Resources Development, Government of India to say retired as public servant. The charge sheet among 106 Paras dated 06.11.2015 filed by the Inspector of Police, CBI, ACB Hyderabad at Para 105, leave about other facts of charge sheet mostly covered supra, what all says on sanction is, sanction is not required as the petitioner-A1 already retired from service. It is not stated specifically as to the bar under Section 197 Cr.P.C. has no application for any special reasons with reference to facts of

¹ AIR 1987 SC 773 = 1987 CrLJ 709

² 1992 Supp. (1) SCC 335

investigation material. Even the petitioner-A1 is a retired public servant by the time of filing final report and taking of cognizance, undisputedly while he was working as Director and while in service at NIT Warangal during 2005 to 2010 the alleged offences taken place as per the very prosecution case; leave about others are private persons or entities, it is unknown how the respondent-CBI can say sanction not required for IPC offences for mere retirement of the petitioner from service subsequent to the occurrence and by the time the final report filed to take cognizance. Coming to the legal position in this regard:

18(a). In State of M.P Vs. Sheetla Sahai³ on the requirement of sanction, distinction between Section 197 CrPC and Section 19 PC Act and the difference between criminal conspiracy covered by Section 120B and Section 107 IPC, it held from para 60 onwards that:

60. This leaves us with the question as to whether an order of sanction was required to be obtained. There exists a distinction between a sanction for prosecution under Section 19 of the Act and Section 197 of the Code of Criminal Procedure. Whereas in terms of Section 19, it would not be necessary to obtain sanction in respect of those who had ceased to be a public servant, Section 197 of the Code of Criminal Procedure requires sanction both for those who were or are public servants.

61. Strong reliance has been placed by Mr. Tulsi on a judgment of this Court in Centre for Public Interest Litigation and Another v. Union of India and Another [(2005) 8 SCC 202]. In that case, it was held:

"9. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution.

This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the

³ (2009) 8 SCC 617

discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.

10. Use of the expression "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

11. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed."

62. Were they required to act in the matter as a part of official duty?

Indisputably, they were required to do so. Be he an Executive Engineer, Superintending Engineer, Chief Engineer, Engineer-in-Chief, Secretary or Deputy Secretary, matters were placed before them by their subordinate officers. They were required to take action thereupon. They were required to apply their own mind. A decision on their part was required to be taken so as to enable them to oversee supervision and completion of a government project. The Minister having regard to the provisions of the Rules of Executive Business was required to take a decision for and on behalf of the State. Some of the respondents, as noticed hereinbefore, were required to render their individual opinion required by their superiors. They were members of the Committee constituted by the authorities, viz., the Minister or the Secretary. At that stage, it was not possible for them to refuse to be a Member of the Committee and/ or not to render any opinion at all when they were asked to perform their duties. They were required to do the same and, thus, there cannot be any doubt whatsoever that each one of them was performing his official duties.

63. For the purpose of attracting the provisions of Section 197 of the Code of Criminal Procedure, it is not necessary that they must act in their official capacity but even where a public servant purports to act in their official capacity, the same would attract the provisions of Section 197 of the Code of Criminal Procedure. It was so held by this Court in Sankaran Moitra v. Sadhna Das and Another [(2006) 4 SCC 584].

The question came up for consideration before this Court in Matajog Dobey v. H.C. Bhari [AIR 1956 SC 44:1955(2) SCR 925] wherein it was held:

"17. Slightly differing tests have been laid down in the decided cases to ascertain the scope and the meaning of the relevant words occurring in Section 197 of the Code; "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". But the difference is only in language and not in substance.

The offence alleged to have been committed must have something to do, or must be related in some manner with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later

stage when the trial proceeds on the merits. What we must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation.

In *Hori Barn Singh v. Crown Sulaiman*, J. observes:

"The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction." The interpretation that found favour with Varadachariar, J. in the same case is stated by him in these terms at p. 187: "There must be something in the nature of the act complained of that attaches it to the official character of the person doing it." In affirming this view, the Judicial Committee of the Privy Council observe in *Gill* case: "A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty ... The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office." *Hori Ram* case is referred to with approval in the later case of *Lieutenant Hector Thomas Huntley v. King-Emperor*, but the test laid down that it must be established that the act complained of was an official act appears to us unduly to narrow down the scope of the protection afforded by Section 197 of the Criminal Procedure Code as defined and understood in the earlier case. The decision in Meads v. King does not carry us any further; it adopts the reasoning in *Gill's* case."

The said principle has been reiterated by this Court in B. Saha v. M.S. Kochar [(1979) 4 SCC 177] in the following terms:

"17. The words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, "it is no part of an official duty to commit an offence, and never can be". In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection

of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision. As pointed out by Ramaswami, J., in Baijnath v. State of M.P., "it is the quality of the act that is important, and if it falls within the scope and range of his official duties, the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted".

.....
64. Reliance has been placed by Mr. Tulsi on Parkash Singh Badal v. State of Punjab and Others [(2007) 1 SCC 1] wherein this Court held:

"38. The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage."

In that case, the appellant therein was charged for commission of an offence of cheating under Sections 420, 467, 468, 471 and 120B IPC.

In the factual matrix involved therein, it was held:

"29. The effect of sub-sections (3) and (4) of Section 19 of the Act are of considerable significance. In sub-section (3) the stress is on "failure of justice" and that too "in the opinion of the court". In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the "failure of justice" is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is (sic not) considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to the root of jurisdiction as observed in para 95 of Narasimha Rao case. Sub-section (3)(c) of Section 19 reduces the rigour of prohibition. In Section 6(2) of the old Act [Section 19(2) of the Act] question relates to doubt about authority to grant sanction and not whether sanction is necessary."

65. In State of Karnataka v. Ameerjan [(2007) 11 SCC 273], it was held that an order of sanction is required to be passed on due application of mind.

66. Thus, in this case, sanction for prosecution of the Respondents 1-7 public servants was required to obtain.

67. For the reasons aforementioned, there is no merit in this appeal by Prosecution agency which is dismissed accordingly."

18(b). From the above, the difference between the two provisions is that sanction under Section 197 CrPC is mandatory even

to take cognizance after retirement of the public servant for the acts done in discharge of official duties for the IPC offences. Whereas under Section 19 of the PC Act, the emphasis is on the words "*who is employed*" in connection with the affairs of the Union or the State Government. If he is not employed, then Section 19 nowhere provides for obtaining such sanction. Further, under sub-section (2), the question of obtaining sanction and the competent authority to accord sanction is relatable to the time of holding the office when the offence was alleged to have been committed. In *Rakesh Kumar Mishra v. State of Bihar and Others*⁴ it was held in this regard and on the scope of Section 197 CrPC that the policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties, without sanction. Further, the words "when any person who is or was a public servant" employed in 197 CrPC were based on the observation at paragraph 15.123 of the 41st Report of the Law Commission of "it appears to us that protection under the Section is needed as much after retirement of the public servant as before retirement. The protection afforded by the Section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 CrPC is the public interest in seeing that official acts do not lead to needless or vexatious prosecution. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant". In *State*

⁴ (2006) 1 SCC 557

of Punjab Vs. Labh Singh⁵ it was held that, though by the time cognizance of the offence under PC Act was taken, the public servant was retired and thereby no sanction under Section 19 of the PC Act is required; however, cognizance taken for the IPC offences is bad without sanction. Unlike section 19 of the PC Act, the protection under Section 197 of CrPC is available to the concerned public servant even after retirement. In Rajib Ranjan Vs. R.Vijakumar⁶ at paras 14 to 18, it is observed that sanction is necessary if the offence alleged against the public servant is committed by him after acting or purporting to act in the discharge of his official duties as held in Buddi Kota Subba Rao Vs. K.Prakasham⁷ para-6 of the act or omission on facts found a reasonable connection to the discharge of his duty by the accused, sanction is required. Therefore, sanction under Section 197 of CrPC to prosecute a retired public servant, for the acts complained while he was in service, is required and without which, the trial Court could not have taken cognizance in so far as the offences punishable under the Indian Penal Code are concerned, even no bar from retirement for the PC Act offences.

18(c). In fact plea of requirement of sanction can be raised by the accused at any time and taking of cognizance no bar once sanction is required for accused to raise so to decide by Court. In dealing with the issue the Apex Court in *P.K. Pradhan v. State of Sikkim*⁸ held that the question of lack of sanction can be raised at any time including during trial and after judgment. In the case of General Officer,

⁵ (2014) 16 SCC 807

⁶ (2015) 1 SCC (Cri) 714

⁷ (1996) 5 SCC 530

⁸ (AIR 2001 SC 2547)

Commanding v. CBI⁹, the Apex Court held that-If the law requires sanction and the Court proceeds against a public servant without sanction; the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void abinitio. The Apex Court for that matter way back in Amrik Singh Vs State of Pepsu¹⁰ held in this regard that the question of lack of sanction can be raised at any time including during trial and after judgment in appeal. The Apex Court in State of Karnataka through CBI Vs. C.Nagarajaswamy¹¹, held in this regard that "Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence alleged against a public servant in discharge of or in connection with his duties. Once it is mandatory for taking cognizance sanction as required under law by a statutory provision, ordinarily, the question has to be dealt with at the stage of taking cognizance. Even cognizance was taken in ignorance of it or erroneously, once the same comes to the Court's notice at any later stage, a finding to that effect has to be given by the Court and the accused is also entitled to take such plea at any point of time including, even in hearing the appeal before the appellate Court once sanction from competent authority is required under law. When all the mandatory requirements of the statutory formalities not complied with, the cognizance cannot be taken by the Court practically and as such for the non-compliance the entire proceedings vitiate to revert the clock back to pre-cognizance stage, if at all to proceed therefrom further. Even a sanction is granted by a person not authorized in law, the same being without jurisdiction and would be a

⁹ [2012] 5 SCR 599

¹⁰ (AIR 1955 SC 309)

¹¹ 2005(8)SCC 37

nullity. Same is the conclusion from *State of Goa Vs. Babu Thomas*¹² holding that when sanction is required from the act connected with the duty of the public servant, taking cognizance by a Court without sanction is incompetent and the error was so fundamental that invalidates the proceedings right from the stage of cognizance. Same is quoted with approval in *State, Inspector of Police, Visakhapatnam V/s. Surva Sankaram Karri*¹³. Thus, whatever the bar under Section 19(3) of PC Act, it no way comes in the way to impugn the sanction, if not validly granted by a competent authority for offences under PC Act also.

18(d). Coming to the sanction under PC Act, in *State of Bihar Vs. Rajmangal Ram*¹⁴ the Apex Court held that the object behind the requirement of grant of sanction to prosecute a public servant need not detain the Court save and except to reiterate that the provisions in this regard either under the Code of Criminal Procedure or the Prevention of Corruption Act, 1988 are designed as a check on frivolous, mischievous and unscrupulous attempts to prosecute a honest public servant for acts arising out of due discharge of duty and also to enable him to efficiently perform the wide range of duties cast on him by virtue of his office. The test, therefore, always is—whether the act complained of has a reasonable connection with the discharge of official duties by the Government or the public servant. If such connection exists and the discharge or exercise of the governmental function is, prima facie, founded on the bonafide judgment of the public servant, the requirement of sanction will be insisted upon so as to act as a filter to keep at bay any motivated, ill-founded and frivolous prosecution against the public servant. In *State of H.P. Vs.*

¹² 2015 (3) ALT (Crl.) 143 SC

¹³ (2006) 7 SCC 172

¹⁴ (2014) 11 SCC 388

M.P. Gupta¹⁵ the Apex Court held that bar under law regarding Court's power to take cognizance as absolute and complete. Hence, Court cannot take cognizance of complaint against a public servant unless sanction is obtained from the appropriate authority, if the offence alleged to have been committed was in discharge of official duty. The mandatory character of the protection afforded to a public servant is brought out by the expression, "No court shall take cognizance of such offence except with the previous sanction". Use of the words "no" and 'shall' makes it abundantly clear that the bar on the exercise of power of the Court to take cognizance of any offence is absolute and complete. The very cognizance is barred if there is no sanction for the acts in purported discharge of his official duties allegedly constituted the offences.

18(e). The undisputed facts in this regard are that the petitioner-A1 worked as Director and it was in his tenure the alleged occurrence taken place and the constructions were pursuant to the scheme of the Union of India and he acted in pursuance of his official capacity though claimed abused his position as such in the alleged commission of the offences. From the factual scenario, for the IPC offences against the petitioner-A1 to take cognizance sanction is mandatory and for want of sanction under Section 197 CrPC, the cognizance of the IPC offences taken by the learned Special Judge are unsustainable and are liable to be set aside.

18(f). In this regard, coming to the contention of the learned Special Public Prosecutor for CBI of any requirement of sanction is a matter to consider during trial and premature to go into at this stage, so also for the offences cognizance already taken by the Special Judge and

¹⁵ (2004) 2 SCC 349

but for leaving to the trial court if at all to frame charges or to discharge, now this Court cannot quash the proceedings at this stage for the inherent powers are to be exercised very sparingly and not as a matter of course concerned to consider said powers and limitations in exercise of the inherent powers under section 482 CrPC concerned, the answer to said contention is available from the expression in Ashok Chaturvedi and Others Vs. Shitul H.Chanchani¹⁶ where the Apex Court held that merely because the accused has a right to plead before the trial Court at the time of framing of charges that there is no material for framing of charges he is not debarred from invoking the inherent jurisdiction of the Court at the earliest point of time when the Magistrate has taken cognizance.

18(g). Having regard to the above, without need of dwelling into the facts as to how far any of the IPC offences not applicable to the petitioner from his contentions in impugning the very cognizance order of the learned trial Judge for the offences punishable under Sections 120-B r/w 420, 468 & 471 IPC on that ground and for want of sanction, from the want of sanction the very cognizance order of the learned Special Judge for the offences punishable under Sections 120-B r/w 420, 468 & 471 IPC are set aside and if at all in future there is any sanction obtained, remedy to impugn the applicability of the IPC offences left open to the petitioner-A1 in such contingency and thereby presently there is no necessity to discuss the attracting or not of the IPC offences supra with reference to Section 6 IPC.

19. From the above, there remained the cognizance order for the offences punishable under Section 13(2) r/w 13(1)(d) of PC Act against the petitioner-A1. As referred supra, no sanction is required for the PC

¹⁶ (1987) 7 SCC 698

Act offences from the factum of the petitioner-A1 retired from service admittedly prior to the filing of the final report and the cognizance order of the learned Special Judge.

19(a). Coming to the attracting of the offences punishable under Section 13(2) r/w 13(1)(d) of PC Act against the petitioner-A1, from the facts of the police final report and from the material placed on record by the accused as part of his defence in the quash petition concerned, the Inherent powers of the High Court under Section 482 CrPC are undisputedly available to evaluate the material and documents on record to the extent of its prima facie satisfaction about existence of sufficient ground for proceeding against the accused or not. Undisputedly the inherent power in the very constitution of the High Court exists in it under Section 482 CrPC to do the right and undo a wrong in the course of administration of justice on the principle- *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest*-(when the law gives a person anything it gives him that without which it cannot exist). Apart from it, from the decision placed reliance by both sides of the Apex Court in *Amit Kapoor V. Ramesh Chander*¹⁷ at para No.27 it was observed that in exercising the powers under Section 482 CrPC the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not is to decide and for that the Court should apply the test and if shows the basic ingredients of the offence not satisfied the Court may interfere. It is also observed that the process of the Court cannot be permitted to be used as an oblique or ultimate/ ulterior purpose. The Court where finds it would amount to abuse of process or interest of Justice favours otherwise it

¹⁷ (2012)9 SCC 460

may quash the proceedings. The power is to be exercised *ex debito justitiae* that is to do real and substantial justice (as held in *Munniswamy supra*) for administration of which alone the Courts exercise. The Apex Court in *Amit Kapoor (supra)* referring to *State of Bihar Vs. Ramesh Singh*¹⁸, held that the presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding *prima facie* whether the Court should proceed with the trial or not. It the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. --."

In *Varala Bharath Kumar Vs. State of Telangana*¹⁹, it is held at Para 7 that the extraordinary power under Article 226 or inherent power under Section 482 of the Code of Criminal Procedure is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.----- Of course, no hard and fast rule can be laid in regard to cases in which Court will exercise its extraordinary jurisdiction of quashing proceedings at any stage. In *Dinesh Dutt Joshi Vs. State of Rajasthan and Another*²⁰, the Apex Court held that Section 482 does not confer any power but only declares that the High Court possesses inherent powers for the purposes specified

¹⁸ (1977) 4 SCC 39

¹⁹ 2017 SAR (Cri) 975 = 2017 (9) SCC 413

²⁰ (2001) 8 SCC 570

in the Section. The powers of the High Court under this Section 482 CrPC are very wide powers to do justice and to ensure that the process of the Court is not permitted to be abused. In Janata Dal Vs. H.S. Chowdhary & Others²¹, the Court, while referring to the inherent powers to make orders as may be necessary for the ends of justice, clarified that such power has to be exercise in appropriate cases *ex debito justitiae*, i.e. to do real and substantial justice for administration of which alone, the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the powers requires a great caution in its exercise. The High Court, as the highest court exercising criminal jurisdiction in a State, has inherent powers to make any order for the purposes of securing the ends of justice. Being an extra ordinary power, it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate court of its powers. The ends of justice are to be understood by ascertainment of the truth as to the facts on balance of evidence on each side. With reference to the facts of the case, the Court held that in the absence of any other method, it has no choice left in the application of the Section except, such tests subject to the caution to be exercised in the use of inherent jurisdiction and the avoidance of interference in details and directed providing of a legal practitioner. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere. Where the exercise of such power is absolutely

²¹ (1992) 4 SCC 305

essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favors, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae*, i.e. to do real and substantial justice for administration of which alone, the courts exist. Lord Salmon in DPP v. Humphrys²², stressed the importance of the inherent power where he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious, the judge has the power to intervene as the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

19(b). From the legal position, coming to the facts, though it discloses that as per Section 26 of the NIT Act, the priority of the authorities of the institute as prescribed under the Statute 3 consists of the Board of Governors as constituted under Section 11 of the Act, the Senate as constituted under Section 14 of the Act, the Finance Committee as constituted under first Statute 10 and the Buildings and Works Committee as constituted under First Statute No.12 and the Director is the ex-officio member in the Board of Governors from other members include senior officers of MHRD and CPWD nominated by the Central Government and engineering officials of the State Government apart from professors of the Institute and the Registrar of the institute is Member Secretary of the Board of Governors, to circulate the minutes of the meeting to all the members and also acts as Member

²² 1977 AC 1

Secretary in the Building Works Committee and finance Committee Secretary as per provisions of NIT Act and the First Statute; under Statute No.6 all orders and decisions of the Board shall be authenticated by the signature of the Director or Registrar or any authorized person of the Board and under Statute 17(12) all contracts for and on behalf of the Institute except one between the institute and the Director shall when authorized by a resolution of the Board passed in that behalf be in writing and be expressed to made in the name of the institute and every such contract to be executed on behalf of the Institute by the Director. No doubt, as per Section 18(2) to (4), the Registrar shall also act as the Secretary of the Board, Senate and such committees as may be prescribed by the statutes, shall be responsible to the Director for the proper discharge of his functions and shall exercise such other powers, performance of such other duties as may be assigned to him by the Act or the statutes or by the Director, leave about accounts shall be audited and certified with audit report by the Comptroller and Auditor-General of India (CAG). Even from the above, the management of the institute is done by the Board and all contracts for and on behalf of the institute shall when authorized by a resolution of the Board passed in that behalf be in writing and be expressed to be made in the name of the institute and every such contract shall be executed on behalf of the institute by the Director, it is a disputed question of fact to adjudicate in the absence of showing by the petitioner as to the Director shall not be personally liable much less with others for any omissions and commissions within the scope of the provisions supra. From this coming to the alleged offence proper, it was from the Government of India enacted Central Educational Institutions (Reservation in Admission) Act, 2006, providing 27% reservation for Other Backward Communities in

Central Educational Institutions under Section 3(iii) of the Act from the calendar year 2007; application of the same to the OBCs were subject matter of stay by the Supreme Court on 29/03/2007, even prior to the stay supra only in relation to OBC reservation and in December, 2006 itself in compliance of the above directions of MHRD, NIT, Warangal submitted DPR (revised) for implementation of reservations for OBCs and capacity expansion with one more hostel with a capacity of 1600 to be sanctioned and constructed, since the proposed increase of 54% to implement reservation for OBC will make the total intake at the end of four academic years 2010-2011 is 5000, with funds in the budget estimates under non plan and plan for the year 2007-2008 approved by the Finance Committee and Board of Governors and received from letter of MHRD No.F21-12/2007-TS, III, dated 24.04.2007 of allocation of Rs.6,000/-lakhs to NIT, Warangal for 2007-2008 with plan, with administrative approval and expenditure sanction. Consequent to it to construct hostel with capacity of 1600 as mentioned in DPR on 23.02.2007, notification for expression of interest for service providers/project Management Consultant, for construction of hall of Residence for capacity of 1600 students was issued by the institute, for which 17 firms responded and out of it 9 firms were short listed by the committee and with approval of Buildings and Works Committee the letter of acceptance dated 07/08.05.2007 was issued to CRN firm(A.2), after due negotiations for reduction in the service charges quoted by the firm from 1.5%to 1.2%on Design Engineering and 1.6% to 1.4%on Project Consultancy and on approval by the BOG in the 11th Meeting dated 05.06.2007, the institute represented by the petitioner-A1 as Director entered into an agreement No.64/2007-08, dated 16.10.2007 with CRN firm(A.2). It shows the work entrustment

and agreements entered are months subsequent to the stay order of the Supreme Court as referred supra and not before, it is leave about taken up the work on priority basis at a stretch and not even in phased manner and not even required to take up in phased manner. Similarly consequent to selection and appointment of PMC and in consideration of the estimates given by the service provider, which were approved in the 11th BOG meeting dated 05.06.2007, on 06.08.2007 the notice inviting pre-qualification of Principal Contractors for construction of halls of Residence for 1600 students (NIP) was issued and 8 firms submitted proposals and of which 6 firms were selected for issuance of the tender documents and subsequently 3 firms submitted financial bids and NCCL(A3) was declared to be L.1 and was awarded the work after negotiation on reduction of the quoted amount by 0.25% and Letter of Acceptance dated 18/19.07.2008 was issued as approved in the 14th BOG meeting dated 18.07.2008 and consequently Agreement No.40/2008-09, dated 18.08.2008 was executed by NIT represented by its Director the petitioner-A1 with NCCL(A3). In this regard, leave about the other mechanism for enforcement of agreement conditions and supervision, final and titular Head is the Director-petitioner-A1. Undisputedly NCCL(A3) was assigned with certain additional works. The allegation in this regard against the petitioner-A1 as Director of NIT, Warangal of committed irregularities during inviting, short listing and awarding of contract relating to construction of hostel with 1600 capacity at NIT, Warangal to the service provider and the contractor and thereby caused undue advantage to them and consequently loss to the institute. In this regard mainly the case of the prosecution is that the Petitioner with dishonest intention, allotted the contract to A-3 Company in an arbitrary

manner, considered disqualified company as qualified and qualified companies as disqualified in order to weaken the healthy competition, followed prequalification system which has been dispensed by CPWD during 2004 itself to ensure and also to rule out the competition among only few restricted Pre-Qualified bidders who easily knew their identity of each other, even both M/S CPN (A-2) and M/s.NCCL (A-3) were already engaged with NITW in another project i.e., construction of halls of residence for 100 students at NITW. Further from the Annexure-P11 the Estimate Cost of Project was only Rs.62.00 Crores, but the bills worth Rs.102.60 Crores submitted by A-3 goes to prove that there was no cost implication worked out and Petitioner/A-1 being the Director was supposed to check the undue benefit to the Contractor-A-3. Further the scale of charges are prescribed at clause 8 of Annexure-P.10, Agreement dated 16.10.2007 and as per the Agreement PMC services, Accused No.2 would only be entitled to Rs.1,18,97,561 @ 1.4% on contract value of Rs. 84,98,25,796/- but A.2 represented by A.4 submitted bills for Rs.1,49,08,026/- in connivance and conspiracy with A1, A-3 & A-5 resulting in wrongful loss of Rs.30,10,525/- to National Institute of Technology, Warangal. As per Annexure-P.9 the letter dated 7/8-5-2007 petitioner/accused No.1 confirmed to conclude the agreement at the earliest but not later than 22.05.2007, but the Agreement was found to have been entered on 16.10.2007. The Bills under the guise of certified for payment by the Faculty I/ c and payment was released based on the pass orders of the concerned officials of the Institute, without verification for large outflow of the funds extraneously from A-2 and A-3 recorded wrong measurements in the books and submitted inflated bills and thereby caused wrongful gain to them with corresponding loss to the Institute.

19(c). Before discussing further on the facts, coming to section 13(2) r/w 13(1)(d) of the PC Act against the petitioner-A1 concerned, section 13(1)(d) of the PC Act covers a public servant who obtains for himself or for any other person, any valuable thing or pecuniary advantage, by corrupt or illegal means or by abusing his official position or while holding office as a public servant. section 13(1)(d) of the PC Act covers if a public servant *dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do*. There can be no crime without a guilty mind from reading of the above. In *State v. A. Parthiban*²³, the Supreme Court held that every acceptance of illegal gratification whether preceded by a demand or not, would be covered by Section 7 of the Act. But if the acceptance of an illegal gratification is in pursuance of a demand by the public servant, then only it would also fall under Section 13(1)(d) of the Act. Importantly, in *S.P. Bhatnagar Vs State*²⁴, it was held that it is for the prosecution to prove affirmatively that the accused acted dishonestly by corrupt or illegal means or by abusing his position and obtained any pecuniary advantage for some other person and deliberately caused loss to the department as held in *S.K.Kale vs State*²⁵ and *M.N.Nambiar Vs State*²⁶. No doubt as held in Paras 53 to 61 in *Sheetla Sahai supra* referring to *Bharat Petroleum Corp. Ltd. vs. T.K. Raju*²⁷ that: In *Inspector Prem Chand v. Govt. of N.C.T. of Delhi & Ors.*²⁸, this Court observed: "In *State of Punjab and Ors. Vs. Ram Singh Ex. Constable*²⁹,

²³ (2006) 11 SCC 473

²⁴ AIR 1979 SC 826

²⁵ AIR 1977 SC 822

²⁶ AIR 1963 SC 1116

²⁷ [2006 (3) SCC 143]

²⁸ [2007 AIR SCW 2532]

²⁹ [1992 (4) SCC 54]

that Misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness and it implies, a wrongful intention, and not a mere error of judgment. Even under the Act, an offence cannot be said to have been committed only because the public servant has obtained either for himself or for any other person any pecuniary advantage. He must do so by abusing his position as public servant or holding office as a public servant. In the latter category of cases, absence of any public interest is a sine qua non. The expression in A. Siva Prakash Vs. State of Kerala³⁰ did not lay down any different or new proposition.

20. Once above were the allegations, it is premature to go into the disputed questions of fact and pre-judge the issue but for left open any defence of the accused as to how far any accusation by charge against him for the offence under Section 13 of the PC Act is sustainable.

21. Having regard to the above and in the result, this Criminal Petition is partly allowed by setting aside the cognizance order in so far as against the IPC offences concerned for want of sanction and by not interfering with the cognizance order of the learned Special Judge for the offence under Section 13 of the PC Act by left open all defenses to put forth during trial. It is made clear that none of the observations in this order will prejudice any of the rights and defence of the accused during trial.

³⁰ AIR 2016 SC 2287

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B. SIVA SANKARA RAO

Date: 04.04.2019
ska

