

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WRIT PETITION (C) NO. 447 OF 2019**

Aman Kumar Singh, S/o Late Shri Y.N. Singh Aged About 50 Years  
Presently Residing at G - 85, Masjid Moth, GK - 1 New Delhi - 110048.

**...Petitioner(s)**

**Versus**

- 1.** State of Chhattisgarh, General Administration Department Through its Secretary, Mahanadi Bhawan, Atal Nagar - 492001 Chhattisgarh.
- 2.** Economic Offences Wing Through its Director General Gaurav Path, Opposite Jai Jawan Petrol Pump Telibandha, Raipur - 492001 Chhattisgarh.
- 3.** Vijaya Mishra A-53, Himalayan Residency, Plot No. 10, Dwarka Sector - 22, New Delhi - 110077.

**... Respondent(s)**

|                |   |                                                                                                                                                                                        |
|----------------|---|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For Petitioner | : | Shri Vikas Singh, Sr. Advocate along with Shri Abhishek Sinha, Ms. Deepika Kalia, Shri Vaibhav Maheshwari, Shri Apoorv Kurup and Shri D.L. Dewangan, Advocates.                        |
| For State      | : | Shri Dayan Krishnan, Sr. Advocate along with Shri Jitendra Pali, Dy. Advocate General, Shri Peeyush Bhatia, Govt. Advocate, Shri Ambuj Agarwal and Shri Sanjeevi Seshphari, Advocates. |
| For Intervenor | : | Shri Manik Mehta-in Person.                                                                                                                                                            |

**Hon'ble Shri Justice P. Sam Koshy**

**JUDGMENT**

**Reserved on 28.02.2020**

**Delivered on 21.05.2020**

- 1.** The decision of General Administration Department of the State of Chhattisgarh dated 06.02.2019 on the basis of correspondence received from the Office of the Prime Minister of India (in short, PMO) dated 16.01.2019 asking the State Economic Offences Investigating Bureau (in short EOW) to constitute Special Investigation Team (in short, SIT) for enquiring upon the allegations levelled against the petitioner made by one Shri Vijaya Mishra i.e. respondent No.3, is what is under challenge in the present writ petition.

2. The challenge to the said order dated 06.02.2019 by the petitioner is that, the entire action on the part of the respondents is with malafides and is politically motivated and is purely a vindictive attitude of the present government.
3. The brief facts relevant for adjudication of the present dispute is that, the petitioner who was a civil servant from the Indian Revenue Services (in short IRS) 1995 batch came to the State of Chhattisgarh on deputation in the year, 2004 and served in various capacities as Secretary and later as Principal Secretary. The petitioner thereafter resigned from IRS w.e.f. 25.01.2010 and thereafter the State Govt. continued with the employment of the petitioner as a Secretary and Principal Secretary on contract basis.
4. That, in the year, 2017, Shri Nanki Ram Kanwar, an ex Minister belonging to the Bhartiya Janta Party i.e. the government which was in power in the year while the petitioner was in service, made certain allegations in respect of the petitioner being associated with certain companies and entities and it was alleged that the petitioner has amassed huge wealth by illegal means while serving the State Govt. initially in the capacity of Secretary and then as Principal Secretary. The said complaint of Shri Kanwar was sent to the Prime Minister's Office (in short, PMO). The PMO, in turn, sent the letter to the State Govt. for an appropriate action. On receipt of the letter from the PMO, the State Govt. sought response of the petitioner and to which the petitioner gave a detailed response. On finding the response given by the petitioner to be satisfactory, the State Govt. took a decision for closing the matter. The decision to close the matter by the State Govt. was sent to Government of India including the PMO.
5. The same Nanki Ram Kanwar in May, 2018 again made a complaint raising similar allegations. In December, 2018 the Assembly Elections

were held and there was a change in regime. Immediately on the change in regime, the petitioner resigned from the said service w.e.f. 12.12.2018. The respondent No.3 Vijaya Mishra meanwhile is said to have made a complaint to the PMO alleging false submission made by the petitioner in his reply into the allegations levelled by Shri Nanki Ram Kanwar which was subjected to scrutiny at the instance of PMO in the year, 2017. The PMO again forwarded the complaint of Shri Vijaya Mishra to the State Govt. for appropriate action. Based upon the said correspondence received from the PMO, the State Govt. is said to have issued the impugned order dated 06.02.2019 (Annexure P/1).

6. It is this order dated 06.02.2019 which is under challenge in the present writ petition.
7. The contention of the petitioner is that, the action on the part of the respondents is politically motivated and the same has been done with malafides. The contention further is that, the action of the respondents being malice in law, or it suffers from legal malice.
8. One of the contentions which was strongly banked upon by the petitioner was that when the ex Minister Shri Nanki Ram Kanwar had sent a complaint to the PMO, a correspondence was made from the PMO to the State Government to look into the issue, based upon which, the petitioner was issued with a notice in respect of the allegations levelled by Shri Nanki Ram Kanwar in his letter and the petitioner had submitted a detailed response which was duly scrutinized by the then State Govt. and the State Govt. finding the reply of the petitioner to be satisfactory, had decided to close the matter and therefore, as per the petitioner, since the State Govt. had on an earlier occasion had already scrutinized the matter and on scrutiny did not find any illegality on the part of the petitioner, the State

Govt. for the same allegations now cannot be permitted to hold another enquiry. Thus, the action smacks malice and is illegal and bad in law.

- 9.** Another contention which the petitioner has raised was that the correspondence received from the PMO was only in respect of complaint that the PMO has received from the respondent No.3. The State Govt. thus on receiving the complaint from the PMO have to look into the allegations only so far as the contents in the complaint of Vijaya Mishra and cannot look into any other issues which are not raised in the complaint. Further, so far as complaint of Shri Vijaya Mishra is concerned, the State Govt. has already scrutinized the same and the Govt. has decided to close the matter and hence, there was no requirement for the respondents to again issue Annexure P/1.
- 10.** The order to set up SIT without even the registration of an FIR and further ordering for investigation is totally impermissible under the law. Referring to various judgments of the Supreme Court, the petitioner challenged the action seeking quashment of Annexure P/1, which according to the petitioner has been issued with total non application of mind and also without any force of law justifying the action.
- 11.** The State counsel, on the other hand, opposing the petition submitted that the writ petition as such is premature as there is no order which is adverse to the interest of the petitioner as of now to be challenged. It is a simple case where some complaint was directly made to the PMO and the PMO, in turn, forwarded the letter to the State Govt. to take appropriate steps and pursuant to the order from the PMO, the impugned decision, Annexure P/1, has been taken.
- 12.** According to the State counsel, the impugned decision is nothing but a follow up action on receipt of a letter from the PMO and the same is only a

preliminary enquiry to find out whether the allegations are true or not, which can only be determined by an enquiry. It is for this purpose, that the impugned decision has been taken to constitute SIT under the respondent No.2. Further contention of the State is that the decision is only to hold an investigation and as such it is not a full fledged enquiry which is being conducted and for which the petitioner should not have any grievance, nor should the petitioner shy away from facing investigation.

- 13.** The mere fact that on an earlier occasion the department did not find any illegality on the part of the petitioner by itself would not estopple the State from conducting investigation in respect of whether there is any economic offence committed by the petitioner or not.
- 14.** The State counsel therefore prayed for the dismissal of the writ petition.
- 15.** Having heard the contentions put forth on either side and on perusal of the record, it would be relevant at this juncture to refer to the impugned order of the State Govt. dated 06.02.2019. For ready reference, the contents of the impugned order is being reproduced hereinunder:

**“छत्तीसगढ़ शासन  
समान्य प्रशासन विभाग  
मंत्रालय  
महानदी भवन, अटल नगर, जिला रायपुर**

कमांक एफ 2-4/2019/1-7, अटल नगर दिनांक 06/02/2019  
प्रति,

महानिर्देशक,  
राज्य आर्थिक अपराध अन्वेषण ब्यूरो  
रायपुर

विषय:—श्री अमन कुमार सिंह (सेवानिवृत्त आई.आर.एस.) तत्कालीन प्रमुख सचिव के विरुद्ध शिकायत।

प्रधानमंत्री कार्यालय के पत्र क्रमांक पीएमओ पी.जी./डी/2019/0013384  
दिनांक 16/01/2019 एवं उक्त पत्र के साथ संलग्न श्री विजय मिश्रा के

शिकायत पत्र दिनांक 04/01/2019 तथा शिकायत से संलग्न प्रदर्श 1 की सूची की छायाप्रति संलग्न प्रेषित है।

2/ प्रदर्श 1 की सूची में दर्शित छत्तीसगढ़ राज्य से संबंधित कंपनियों/ जानकारी पर पूर्व में जांच नहीं की गई है। अतः राज्य शासन द्वारा निर्णय लिया गया है कि शिकायत के प्रदर्श 1 की सूची की जांच एसआईटी गठन कर, राज्य आर्थिक अपराध अन्वेषण ब्यूरो द्वारा की जाये।

3/ कृपया उक्त निर्णय के अनुपालन में ब्यूरो द्वारा जांच कार्यवाही करते हुए अनुभागिक कार्यवाही की जाकर, शासन को अवगत कराने का कष्ट करें।”

16. A plain reading of the contents of the impugned order reproduced hereinabove reflects that the impugned order has been passed on the basis of the correspondence received from the Office of the Prime Minister dated 16.01.2019. Before proceeding further it would also be relevant to appreciate the contents of the correspondence made from the Office of the Prime Minister which for ready reference is being reproduced hereinunder:

  
प्रधान मंत्री कार्यालय  
Prime Minister's Office

O/O CHIEF SECRETARY  
Govt. of Chhattisgarh  
DAK-CS- 1322  
Date 31-01-2019

नई दिल्ली -110011  
New Delhi- 110011  
Dated:16/01/2019

No:PMOPG/D/2019/0018364

To  
CHIEF SECRETARY,  
GOVERNMENT OF CHATTISGARH,  
NAYA RAIPUR

Sub:Petition of SHRI VIJAYA MISHRA  
A-53  
HIMALAYAN RESIDENCY  
PLOT-NO - 10 DWARKA SECTOR-22  
NEW DELHI  
DELHI-110077

31 JAN 2019  
DS-8  
R. L. L. 179  
31.1.19

Sir,

I am desired to forward herewith a letter/gist of oral representation dated 04/01/2019 received in this office from SHRI VIJAYA MISHRA for action as appropriate. Reply may be sent to the Petitioner and a copy of the same may be uploaded on the portal.

[RAJEEV RANJAN KUSHWAHA]  
SECTION OFFICER

- 17.** From plain reading of the aforesaid correspondence dated 16.01.2019 it clearly indicates that the Prime Minister's Officer had issued a correspondence to the Chief Secretary of the State forwarding a complaint lodged by the respondent no.3 written to the Prime Minister. The PMO further had directed the Office of the Chief Secretary of the State for taking appropriate action. It was also mentioned in the correspondence that after taking appropriate action a copy of the same may be sent to the complainant as also it should be uploaded in the portal. Another aspect which is indicative from the correspondence is that vide correspondence dated 16.01.2019 the Office of the Prime Minister had sent the complete complaint of respondent no.3 Vijaya Mishra to the State Govt. including enclosures and Annexures referred in the complaint. Along with the enclosures, there was also this previous complaint which was made to the Prime Minister by an Ex-Minister of the State Govt. namely Nanki Ram Kanwar.
- 18.** In the light of the correspondence received by the State of Chhattisgarh from the Office of the Prime Minister dated 16.01.2019 it has now to be appreciated whether the decision of the State Govt. to conduct an enquiry or for that matter the issuance of impugned order Annexure P-1 dated 06.02.2019 is proper, legal and justified or not?
- 19.** If we look into the contents of Annexure P-1, all that it reflects is that the State Govt. has taken a decision to conduct an inquiry by the State Economic Offences Wing by constituting an SIT. It is also relevant at this juncture to take note of the fact that the impugned order Annexure P-1 is an administrative decision taken by the State Govt. and which has been marked to the Director General, State Economic Offences Wing. The

Director General in turn has been asked to conduct an inquiry and to inform the State in respect of the action which is likely to be taken.

- 20.** In this context, it is relevant to consider the scope of interference by the Writ Court. Article 246 of the Constitution of India deals with the distribution of Legislative powers between the Parliament and the State Legislatures. In this context, if we refer to Entry 2 in List II of the Seventh Schedule, we find that in the State list, matters dealing with the police have been reflected therein which makes it clear that it is well within the competence and domain of the State Govt. to enact provisions dealing with the Police. In furtherance to it, the State of Chhattisgarh has enacted the Chhattisgarh Police Act, 2007 and Section 3 of which envisages the establishment of State Police Force. Section 32 of the said Act also provides power with the State Govt. to establish special investigating agencies to deal with special nature of offences.
- 21.** Now we come to the recent landmark decision of the Supreme Court in the case of **Lalita Kumari Vs. Government of Uttar Pradesh and others, (2014) 2 SCC 1**. While concluding the said judgment, the Supreme Court has laid down certain guidelines and directions, relevant paragraphs of which are reproduced hereinunder:

“120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not

proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.”

**22.** Reiterating the aforesaid principle of law, the Supreme Court again in a very recent judgment reported in (2019) SCC OnLine SC 1599 in the case of **State of Telangana Vs. Managipet alias Mangipet Sarveshwar Reddy** dealing with the aspect of a preliminary enquiry on receipt of a complaint was of the following view:

“32. The said judgment does not help the learned counsel for the Accused Officer. The scope and ambit of a preliminary inquiry being necessary before lodging an FIR would depend upon the facts of each case. There is no set format or manner in which a preliminary inquiry is to be conducted. The objective of the same is only to ensure that a criminal investigation process is not initiated on a frivolous and untenable complaint. That is the test laid down in Lalita Kumari.

33. In the present case, the FIR itself shows that the information collected is in respect of disproportionate assets of the Accused Officer. The purpose of a preliminary inquiry is to screen wholly frivolous and motivated complaints, in furtherance of acting fairly and objectively. Herein, relevant information was available with the informant in respect of prima facie allegations disclosing a cognizable offence. Therefore, once the officer recording the FIR is satisfied with such disclosure, he can proceed against the accused even without conducting any inquiry or by any other manner on the basis of the credible information received by him. It cannot

be said that the FIR is liable to be quashed for the reason that the preliminary inquiry was not conducted. The same can only be done if upon a reading of the entirety of an FIR, no offence is disclosed. Reference in this regard, is made to a judgment of this Court reported as *State of Haryana v. Bhajan Lal*<sup>17</sup> wherein, this Court held inter alia that where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused and also where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

34. Therefore, we hold that the preliminary inquiry warranted in *Lalita Kumari* is not required to be mandatorily conducted in all corruption cases. It has been reiterated by this Court in multiple instances that the type of preliminary inquiry to be conducted will depend on the facts and circumstances of each case. There are no fixed parameters on which such inquiry can be said to be conducted. Therefore, any formal and informal collection of information disclosing a cognizable offence to the satisfaction of the person recording the FIR is sufficient.”

**23.** Keeping in view the aforesaid principles of law as laid down by the Supreme Court if we look at the impugned order, it only refers to conducting of an inquiry for which an SIT has been ordered to be constituted. Moreover, one should not forget that the decision of the State Govt. in issuance of Annexure P-1 was pursuant to an instruction received from the Prime Minister Office.

**24.** Another aspect which needs consideration as of now is whether the impugned order of the State Govt. to conduct an inquiry is in any manner infringing upon any of the rights of the petitioner.

- 25.** Merely taking a decision to hold an inquiry in itself does not amount to passing of an adverse order or an action infringing any of the rights of the petitioner. It is only the findings obtained in the course of inquiry which would determine the next course/step required by the State Govt. or which the State govt. intends to take.
- 26.** As of now, the fact undisputed is that the respondent no.3 Vijaya Mishra had sent a complaint to the PMO. The PMO in turn forwarded the complaint to the State Govt. with a direction to take an appropriate action and to inform the party as well as the PMO in respect of the action taken. Based upon the correspondence from the Office of the Prime Minister dated 16.01.2019 the State Govt. has decided to conduct an inquiry. Now whether an offence has been made out or not is too premature at this stage to comment upon. It will all depend upon the finding which would be gathered in the course of inquiry.
- 27.** Given the aforesaid reasons which necessitated the State Govt. to take a decision automatically rejects the ground of the decision being politically motivated or having been passed with political malice. Annexure P-1 is only a decision to conduct an inquiry based upon the instructions received from the Office of the Prime Minister.
- 28.** To what extent the inquiry would be conducted or whether the Investigating Agencies or the SIT constituted to enquire are exceeding their jurisdiction or not is again one which cannot be determined at this stage.
- 29.** What should be appreciated is that despite the fact the High Court has wide powers under article 226 of the Constitution of India, it cannot be lost sight of the fact that there are certain self-imposed limitations also while exercising these powers under article 226.

- 30.** It is settled position of law that the extraordinary powers conferred under article 226 upon the High Court must be sparingly exercised it must also be cautiously and exercised under exceptional situations which would be necessary to provide credibility and instill confidence in the investigating agency and the authorities dealing with it.
- 31.** It is also a settled position of law that there are only three circumstances under which the inherent jurisdiction of the High Court must be exercised, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court and (iii) to otherwise secure the ends of justice. The High Court should refrain from giving out a prima facie decision or opinion in a case particularly when the entire facts of the case is still to be enquired or investigated. The documentary proof are yet to be collected. An investigation into a complaint or an offence is a field exclusively reserved with the State and the agencies authorised by the State to enquire or investigate. It is the unfettered power of the state authorities to inquire into a complaint or a report of an offence so long as the said power is legitimately exercised.
- 32.** In the instant case what has to be realised is the fact that a complaint was received in the PMO and in turn the PMO has sent the matter to the State government for taking an appropriate action. The appropriate action which is required to be taken cannot be done without an enquiry ascertaining whether any offence or misconduct is made out at all. It is well within the powers of the State government to order for an enquiry before a decision or an action is taken.
- 33.** Since the action contemplated at this stage is only a preliminary enquiry that too on the bases of the correspondence received from the office of the

Prime Minister, there is no requirement at this stage for regular registration of a First Information Report for initiation of an enquiry.

**34.** The Supreme Court in the case of **J Jayalalithaa and others versus State of Karnataka and others**, 2014 (2) SCC - 401 referring to an earlier decision in the case of Ravi Yashwant Bhoir, has held that "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done deliberately in disregard to the rights of the others. It is an act which is also done with an oblique or indirect object. Malafide also can be established if it is done wrongfully and wilfully without any reasonable or probable cause with clear ill feeling and spite.

**35.** Justice VR Krishna Iyer dealing on the topic what is malafides in the case of **State of Punjab and Another versus Gurdial Singh and others** 1980 (2) SCC-471 has held that;

"the action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the interest meant. When the custodian of power is influenced in its exercise by considerations outside those for promotions of which the power is vested the court calls it a colourable exercise and is undeceived by illusion".

**36.** The Indian courts from time immemorial has been of the firm view that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of an enquiry. As early as in the year 1945 in the case of **King Emperor versus Khwaja Nazir Ahmad**, 1945 AIR PC 18 had held that;

"The functions of the judiciary and the police are complimentary not overlapping and the combination of individual liberty observance of law and order is only to be obtained by leaving each to exercise its own function, always

of course subject moved under to the right of the court to intervene in an appropriate case”.

**37. In the case of State of Orissa and others versus Ujjal Kumar Burdhan**

2012 (4) SCC 547 the Supreme Court has held that;

“the power of issuance of Writ which is an extraordinary power has to be exercised sparingly with circumspection and as far as possible, for extraordinary cases, where the allegations in the complaint or the first information report against those in charge of investigation its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in charge of enquiry or investigation the High Court should be loath to interfere at the early premature stage of enquiry and investigation”.

**38. An enquiry or an investigation is always carried for the purpose of ascertaining as to a misconduct or offence has been committed or not. If yes, then the necessary materials for establishing the same is either collected or is secured for a detailed enquiry or investigation to be conducted for establishing the offence and for bringing the offender to book. Unless a proper investigation is conducted or an enquiry is held to find out whether an offence is committed or not, there is always a possibility of the offender succeeding in escaping from the consequences laid down under the law. The law of the land requires that a person who commits an offence has to be tried under the laws applicable and should be punished for the wrong that he has committed. If the courts start interfering at the enquiry stage or at the investigation stage, it will be throttling of the procedures as laid down under the law in respect of enquiry and investigation which otherwise is predominantly under the domain and administrative powers of the state authorities.**

**39.** Undoubtedly, the power possessed by the High Court under the Constitution is very wide but it is not unlimited. It has to be exercised sparingly, carefully and cautiously, *ex debito justitiae* to do real and substantial justice for which alone the court exists. The power exist only to prevent abuse of authority and to ensure that injustice does not occur.

**40.** Recently in the case of **P Chidambaram Vs. Directorate of Enforcement** 2019 (9) SCC 24 in paragraph 66 the Hon'ble Supreme Court has held as under:

“66. As held by the Supreme Court in a catena of judgments that there is a well-defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. It must be left to the discretion of the investigating agency to decide the course of investigation. If the court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal course of investigation. It must be left to the investigating agency to proceed in its own manner in interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused.”

**41.** The aforesaid view of the Supreme Court in the case of **P Chidambaram** was relying upon two of the earlier decisions of the Supreme Court in the case of **State of Bihar versus PP Sharma**, 1992 Suppl (1) SCC 222 and also in the case of **Dukhishyam Benupani versus Arun Kumar Bajoria** 1998 (1) SCC 52 wherein in both these judgements it has been emphatically laid down by the Supreme Court that an investigation of a complaint or an offence is an arm of the law and it plays a pivotal role in the maintenance of law and order and also in the dispensation of criminal justice. It was also clearly laid down in these judgements that it is not the

function of the court to monitor investigation process or an enquiry contemplated by the State as long as such enquiry and investigation does not transgress any provision of law.

- 42.** Given the aforesaid legal position as it stands it is apparently clear that according to the Supreme Court it is not the function of the court to monitor an enquiry or an investigation on a complaint of an alleged commission of offence. According to the Supreme Court if the courts were to interfere in each and every stage of the investigation or an enquiry it would have an adverse impact on the administration of justice and also in the maintenance of the law and order situation of a State. It must be left for the State government to proceed in its own manner of investigation or an enquiry as regards the complaint of, a commission of an offence or an act of misconduct.
- 43.** Coming to the issue of the complaint lodged against the petitioner having been earlier also scrutinized by the department and having not proceeded further could the respondents further subject the matter to be reopened or to conduct a fresh enquiry or an investigation in respect of the same complaint of certain misappropriation of government funds. What requires to be considered is that only because the department on an earlier occasion had called for an explanation from the petitioner and thereafter if the State government has not proceeded further that by itself would not be sufficient enough to hold that, given a reason, the State Govt. cannot order for a detailed enquiry.
- 44.** Another aspect which is evident from the perusal of the records is that there has not been any enquiry conducted on an earlier occasion. It was only an explanation which was sought from the petitioner who submitted his reply and on the basis of his reply things were not proceeded further.

This itself would show that in fact there has not been any enquiry as such conducted to reach to a conclusion as to whether the contents in the complaint forwarded from the office of the PMO had merits or not. Only because there has been a change of government at the State level by itself is not sufficient to draw an inference that the move on the part of the respondents was politically motivated or has been done with political vengeance.

**45.** It is settled position of law that the allegations of malafides have not only to be alleged but it also has to be pleaded with substantial material for establishing the same.

**46.** It would be relevant at this juncture to refer to the judgement of the Hon'ble Supreme Court in the case of **Parkash Singh Badal Vs State of Punjab** 2007 (1) SCC 1 wherein in paragraph 61 and 62 dealing with the issue of the actions allegedly being done at the behest of a political opponent or the action being politically motivated, it has been held as under:

“61. A plea of mala fides has not only to be clearly pleaded but specifically proved by adducing cogent evidence. Mere allegation and suspicions would not be sufficient. The person against whom mala fides conduct is attributed is interestingly not a party in the proceedings.

62. So far as the allegation that political opponent had lodged the complaint is concerned, that itself is not sufficient for the Court to interfere. When the allegation is made, investigation is undertaken to find out whether there is any substance in the allegation. Merely because the political opponent was the complainant that does not per se lead to an inference that the complaint has to be thrown out or that no notice should be taken thereof.”

**47.** The Supreme Court further in the very same judgement further went on to decide holding that an enquiry or an investigation should not be shut out at

the threshold because of a political opponent or a person with political difference has raised the complaint or has made the allegations of commission of offence. According to the Supreme Court the ultimate test has to be whether the allegations made have any substance or not and which can be ascertained only after an enquiry or an investigation.

**48.** Given the aforesaid facts and circumstances of the case and also going through the judicial pronouncements as have been referred to in the preceding paragraphs, this court has no hesitation at this juncture to hold that the writ petition at this juncture does not have merits to interfere with the decision of the State government or in the passing of the impugned order under challenge in the present writ petition. Based on the judicial pronouncements as referred to here in above, if we look into the judgements cited by the counsel for the petitioner, it would clearly reveal that those judgements have been rendered under entirely different factual backdrop which would not be attracted in the facts of the present case and are therefore, distinguishable on facts and also one which would not come to the aid of the petitioner for challenging the impugned order in the present writ petition.

**49.** The Writ Petition therefore deserves to be and is accordingly dismissed with no order as to costs.

Sd/-  
(P. Sam Koshy)  
**Judge**