A.F.R.

Neutral Citation No. - 2024:AHC:90017-DB

Court No. - 67

Case :- CRIMINAL MISC. WRIT PETITION No. - 13460 of 2023
Petitioner :- Manoj Kumar Gupta And 2 Others
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Baleshwar Chaturvedi,Mukesh Kumar Singh
Counsel for Respondent :- Anwar Hussain,Avinash Mani Tripathi,G.A.

Hon'ble Rahul Chaturvedi,J.
Hon'ble Mohd. Azhar Husain Idrisi,J.

1. Heard Shri Mukesh Kumar Singh, learned counsel for the petitioners namely (i) Manoj Kumar Gupta, Executive Engineer, LESA Trans, Sitapur Road, Lucknow; (ii) Deependra Singh, Sub Divisional Officer at 33/11 KV Sub Station Faizullaganj, Aliganj, Lucknow; (iii) Rakesh Pratap Singh, contractual employee at 33/11 KV Sub Station GSI, Aliganj, Lucknow and Shri Avinash Mani Tripathi and Shri Anwar Hussain, learned counsel for respondent no.4 Bhagwan Das Gupta, presently posted as C.J.M., Banda and Shri Baleshwar Chaturvedi, learned Amicus Curiae for the Electricity Department and also Shri Ghanshyam Kumar, learned A.G.A.-I for the State of U.P.

➢ Pleadings have been exchanged between the parties as well as the written submissions were also furnished by the respective counsels. The matter is ripe for final adjudication of the case.

➢ The matter was heard by this Court at length on 05.10.2023 and the judgment was reserved. In the intervening period, while drafting of judgment was about to complete, the Court came across certain issues which need further clarification. Under the circumstances, on 10.5.2024 the case was ordered to be listed on 21.5.2024 for further hearing. After having clarifications, hence this judgment.

➢ From the array of the parties, it is evident that the F.I.R. was lodged by respondent no.4 Dr. Bhagwan Das Gupta, in his personal

capacity and on his own name, as an informant of Case Crime No.606 of 2023, u/s 406, 409, 419, 420, 464, 467, 468, 471 and 386 I.P.C., Police Station Kotwali, District Banda, against the petitioners, who are the serving officials of the Electricity Department of the government.

Hence, this petition by the petitioners, who are jointly assailing the legality and validity of the F.I.R. lodged by respondent no.4 who is a judicial officer at Banda Judgeship and posted as Chief Judicial Magistrate.

➢ Before coming to the merit of the case, this Court would like to **enucleate** the level of standard expected from the Judges or even from the magistrates and thereafter deal with the merit of the case.

PREFACE :

> *"My son, do not forget my law, but let your heart keep my commands; Let not justice and truth forsake you, bind them around your neck, write them on the tablet of your heart."*

As per the provisions of Article 261(3) of the Constitution of India the Judges while discharging their duties in the district courts enjoy constitutional authorities. Their position and authority cannot be compared with the position of other civil servants, discharging their duties their peace, law and order in the society, that's the reason this Court is in favour of calling them as "Judges" and not as a Judicial Officer. They are not officers but Judges. This position was reiterated by the Hon'ble Apex Court in the case of ***All India Judges Association vs. Union of India, 1992 (1) SCC 119,*** holding that the Judges of the district judiciary are exercising the sovereign function of the State. Their status and position cannot be compared with the officers of the district administration or the police administration. If there can be any comparison, their position is at par with the political executives because going by the nature of duties they are supposed to

discharge, they are the decision makers and such decision by way of judgments and orders are binding on all throughout the territory in which they exercise their jurisdiction. Accordingly their behaviour, conduct, temperament, tolerance should also be at par with their constitutional position and the same cannot be compared with other officers discharging their duties for implementing the policies in the society.

Justice R.C. Lahoti, the then Chief Justice of India, in "Canons of Judicial Ethics" says that who talks ethics in these days? and who listens to ethics?, Justice Lahoti by way of giving a beautiful example states that;

> *A patient visited a doctor's clinic and asked the receptionist -*
>
> *"I want to see a specialist of eyes and ears."*
>
> *The receptionists said "There are doctors of ears, nose and throat and there are doctors of eyes; There is no specialist who treats both the eyes and ears." But then why are you in need of such a doctor?"*
>
> *The patient replied "These days I do not see what I hear and I do not hear what I see."*

Thus, the last lines of above message, that I do not see what I hear and I do not hear what I see, really are the guidelines for every Judge. His conduct, behaviour and approach should be such, which is suave and soothing to eyes and ear.

In this regard, in our oldest cultural lessons it has been emphatically mentioned as under:

> "स्वस्तिप्रजाभ्यः परिपालयन्तां न्यायेन मार्गेण महीं महीशाः।
> गोब्राह्मणेभ्यः शुभमस्तु नित्यं लोकाः समस्ताः सुखिनो भवन्तु॥
>
> May the well-being of all people be protected by the powerful and mighty leaders be with law and justice. May the success be with all divinity and scholars, May all (samastāḥ) the worlds (lokāḥ) become (bhavantu) happy (sukhino)."

In simple words we can say that the judicial ethics, morals, judicial behaviour are the basic principles of the right action for the Judges to ensure their impeccable, spotless and see through image in the society. They consist of or relate to the moral action, conduct, motive, character of a Judge, what is right or befitting to the individual. It can also be said that judicial ethics consists of such values as belongs to the system of the judiciary without regard to the time or place and are preferred for justice dispensation.

A passage for the writings of Sir Winston Churchill generally quoted by Law Commission of India in several reports and recommendations holds a lot of relevance in this regard. This Court is mentioning the passage of Winston Churchill because it is very much relevant for judicial ethics and judicial conduct;

> *"A form of life and conduct for more severe and restricted than that of ordinary people is required from judges and though unwritten has been most strictly observed. They are at once privileged and restrictive; they have to present a continuous aspect of dignity and conduct".*

The aforesaid passage shows that judges has to lead a restricted life. Austerity is a quality to be practised by every Judge-personally as also in the public functioning.

This necessarily gives rise to a situation where the Judges must have a passion perseverance and pain taking habit. He should administer justice according to law and deals with his appointment as public trust, he should not allow other affairs to his private interest to interfere with from and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambition or increasing the popularity.

In a Full Bench judgment of Supreme Court of Bangladesh (Appellate Division) in ***Md. Idrisur Rahman, Government of***

Bangladesh and Ors. vs. Syed Shahidur Rahman and Ors, 2016(24) BLT (AD) 178 while deciding the constitutional issue involved in the aforesaid appeal having public importance. The point is directly related to code of conduct of the Judges of higher echelons. The code of conduct relates to upholding the integrity and independence of judiciary. It reminds that the Judges to maintain "highest standards of conduct" so that the integrity and independence of the judiciary are preserved. It is expected that the judges should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge should not allow family, social, or other relationships to influence judicial conduct. A judge should not lend the prestige of the judicial office to advance the private interests of others; nor convey or permit others to convey the impression that they are in a special position to influence the Judge. Every Judge must at all times be conscious that he is under the public gaze and there should be no act or omission by him which is unbecoming of his office.

A couplet of Urdu by an Urdu poet would be mauzu (postulate) herein under:

"मुंसिफ़-ओ-मुद्दई से कैसे रू-ब-रू होंगे,
तमाशबीन कल रक़ीब कू-ब-कू होंगे।
लड़ेंगे कैसे कल तलक वो मेरे बाज़ू थे,
जीत जायेंगे अगर हम बे-आबरू होंगे।"

In yet another judgment in the case of **Daya Shankar vs. High Court of Allahabad and others, 1987 (3) SCC 1,** held thus :

> *"Judicial officers cannot have two standards, one in the court and other outside the court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy."*

The first and foremost quality required in a Judge is his integrity. The need of integrity in the judiciary is much higher than other

institution. The judiciary is an institution whose foundation is based on honesty, impartiality and integrity of sterling quality. Judges must remember that they are not merely an employee but they hold a high public office. The standard of conduct expected of a Judge is much than that of an ordinary person. The following is the relevant extracts from the judgment of ***R.C. Chandel vs. High Court of Madhya Pradesh, 2012 (8) SCC 58*** :

> *"Judicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with high moral values. When a litigant enters the courtroom, he must feel secured that the Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a Judge is much higher than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge, like Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and rule of law to survive, justice system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartiality and intellectual honesty."*

On the similar lines, in the judgment of ***Tarak Singh vs. Jyoti Basu, 2005 (1) SCC 201*** the Hon'ble Apex Court has held that ***:***

> *"Integrity is the hall-mark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that temple of justice do not crack from inside, which will lead to catastrophe in the justice delivery system resulting in the failure of Public Confidence in the system. We must remember that woodpeckers inside pose a larger threat than the storm outside."*

If a person is holding prestigious judicial office, there is nothing wrong in a Judge having an ambition to achieve something, but if the

ambition to achieve is rightly to cause a compromise with his divine judicial duty, better not to pursue it, because if a Judge is too ambitious to achieve something materially, he becomes timid. When he becomes timid, there will be tendency to make a compromise between his divine duty and his personal interest. There will be conflict between the interest and duties.

It has been taught in Bible that :

"Why do you look at the speck of sawdust in your brother's eye and pay no attention to the plank in your own eye?"

In the instant case which would be discussed by this Court, this exactly happened when Dr. Bhagwan Das Gupta occupying a position of Chief Judicial Magistrate at Banda lodges an F.I.R. against the petitioners who are the government servants to teach a bitter lesson to them, so that they may understand the power and position of a C.J.M. These government servants (the petitioners) are of the Electricity Department, were not serving his interest or dancing on his tune, thus by initiating a criminal prosecution against them after levelling bogus and wild allegations, the respondent no.4 wants to kneel down them, before him.

We have extracted the above observations from the various authorities who time and again have underlined the high standards of morals, ethics, integrity, impartiality, see through honesty and selfless service towards society by a judicial officer, who is different and distinct from the rest of the government officers and is being entrusted to do a divine job to perform judicial work with best of his ability, integrity, impartiality and to give up his personal ego, material gains and interest, so that he may pave path for free flow of justice to the common men of the society.

2. We have to test the present case with the above mentioned higher standards of judicial propriety and discipline and the conduct of an individual Judge i.e. Respondent no.4 in the present case.

FACTS OF THE CASE :

3. As mentioned above, the petitioners Manoj Kumar Gupta, Executive Engineer, LESA Trans, Sitapur Road, Lucknow; (ii) Deependra Singh, Sub Divisional Officer at 33/11 KV Sub Station Faizullaganj, Aliganj, Lucknow; (iii) Rakesh Pratap Singh, contractual employee at 33/11 KV Sub Station GSI, Aliganj, Lucknow have jointly invoked the powers of this Court under Article 226 of the Constitution of India with the follow prayers :

> *"(a) issue a writ, order or direction in the nature of certiorari quashing the First Information Report dated 27.07.2023 in Case Crime No.605 of 2023, under Sections 406, 409, 419, 420, 464, 467, 468, 471, 386 I.P.C., Police Station Kotwali, District Banda (Annexure No.1 of Petition).*
>
> *(b) issue a writ, order or direction in the nature of mandamus commanding the respondent no.2 and 3 not to arrest the petitioners in Case Crime No.605 of 2023, under Sections 406, 409, 419, 420, 464, 467, 468, 471, 386 I.P.C., Police Station-Kotwali, District Banda."*

It is worthwhile to mention here that this FIR was lodged against the accused-petitioners by the respondent no.4 Dr. Bhagwan Das Gupta, posted as C.J.M., Banda in his personal capacity, levelling wild and tailored allegations of fraud, cheating, fabrication of documents, extortion of money against the petitioners who themselves are the government officials of Electricity Department. This F.I.R. is nothing but tissue of utter falsehood, drafted by Dr. Bhagwan Das Gupta, Respondent No.4.

4. The brief skeleton facts of the case which has given rise to the present controversy are;

(i) a residential premises No.ES-1B/ 239-A, Sitapur Road Yojna (SRY), Aliganj, Lucknow was earlier owned by one Vandana Pathak wife of Atul Awasthi, having Electricity Connection No.4104390000 (from Madhyanchal Vidyut Vitran Nigam Limited) was allowed on 15.7.2005 in the name of Vandana Pathak in her above residential premises.

5. Respondent no.4 Dr. Bhagwan Das Gupta has purchased the above premises vide sale deed dated 3.8.2009 from Vandana Pathak, and thereafter moved an application to the concerned electricity department for entering his name in place of Vandana Pathak. S.D.O., 33/11 KV Sub Station, G.S.I., Aliganj vide letter dated 17.6.2013 apprised respondent no.4 that Rs.166916/- is outstanding against the above electricity connection (Annexure No.2).

Shocked by this, the respondent no.4 filed a complaint on 20.8.2013 before the Additional Civil Judge, Court No.37, Lucknow for initiating a prosecution u/s 420, 464, 467, 468, 504, 506 I.P.C. against Vandana Pathak, Atul Awasthi (her husband), A.K. Jaiswal (Executive Engineer), Electricity Distribution Division, LESA, Rahim Nagar Sector-6, Jankipuram Extension, Lucknow; Krishna Avatar Vishwakarma and Rajendra Kumar, Junior Engineers, LESA.

In fact, these officials of Electricity Department (the petitioners) have got no concern with *inter-se* dealing between Vandana Pathak/Atul Awasthi on one hand and Mr. Bhagwan Das Gupta, C.J.M., Banda on the other hand. S.D.O. has only raised the demand of the outstanding sum over the said residential premises, since Dr. Bhagwan Das Gupta, Respondent No.4 has now become new owner of the premises in question after 03.8.2009.

6. The court of Additional Civil Judge, Court No.37, Lucknow on 14.2.2014 have summoned Vandana Pathak and her husband Atul

Awasthi also u/s 406, 504, 506 I.P.C. in Complaint Case No.88 of 2013 but did not find any complicity of proposed accused no.3, 4 and 5 i.e. Executive Engineer, S.D.O. and Junior Engineer in this tangle, accordingly dropped their names from summoning order dated 14.2.2014.

It seems that aggrieved by this order and with ill motive, Respondent no.4 Dr. Bhagwan Das Gupta challenged the order dated 14.2.2014 by filing a Crl. Revision 690 of 2014 in the court of Special Judge, C.B.I., Court no.4, Lucknow who vide judgment and order dated 30.7.2014 allowed the revision and directed the court below to pass a fresh order in the light of the observation in the revisional court's judgment. Accordingly, the concerned Magistrate have again passed a fresh order on 15.5.2015 summoning all the accused in complaint dated 20.8.2013 u/s 504, 506, 406, 420, 467, 468, 120-B I.P.C. including officials of Electricity Department, who have acted in the discharge of official duty, apprising Respondent no.4 about the outstanding sum from the electricity connection installed in the residential premises now owned by Respondent No.4.

This summoning order was challenged by the proposed accused no.3, 4 and 5 by filing Crl. Revision No.124 of 2016 before the revisional court, who vide judgment and order dated 29.01.2021 have allowed the revision and set aside the summoning order dated 15.5.2015, so far as the revisionist are concerned i.e. the Executive Engineer, S.D.O. and Junior Engineer.

7. It was further argued by learned counsel for petitioners that Vandana Pathak and Atul Awasthi too have filed a Criminal Revision before Special Judge, E.C. Act, Lucknow assailing the legality and validity of summoning order dated 15.5.2015. Though the said revision was eventually rejected by the learned revisional court. Aggrieved by the revisional court's order, they have preferred Misc. Single Case

No.31368 of 2018 (Vandana Pathak and others vs. State of U.P.), Lucknow Bench of this Court while disposing of the aforesaid 482 application on 13.11.2019 passed the following observation :

> *"It is undisputed that House No. ES 1B 239/A, EWS, Sitapur Road Scheme, Lucknow was sold by the petitioners to respondent no. 2 vide registered sale deed dated 03.08.2019. In para 3 of the sale deed, it has categorically been mentioned that if any liability, upto the date of execution of the sale deed, is found on the property in question, then the seller (petitioners) shall be responsible to pay the same. In paragraph 5 of the petition, it has specifically been pleaded that petitioners have deposited the last electricity bill on 30.07.2009 and no electricity bill was due on the date of execution of the sale deed, i.e., on 03.08.2019. Para 5 of the petition reads as under:*
>
> *"That on the date of aforesaid sale deed, there were no electricity dues on the house. The last electricity bill on the said house was Rs.6941/- which was paid on 30.7.2009 by the petitioners i.e. prior to date of registry in favour of complainant.?*
>
> *Further, if at all, any electricity bill was due, as alleged by respondent no. 2 in the complaint, on the date of execution of the sale deed, i.e., 03.08.2009, petitioners are liable for payment of the same and by any stretch of imagination, no criminal complaint is maintainable, as no alleged offence under Sections 504, 506, 406, 420, 467 and 468 read with Section 120B I.P.C. is made out."*

In view of above facts and circumstances, the proceedings against the applicants Vandana Pathak and her husband stands quashed subject to above condition by the Bench of this Court.

8. It is apposite to mention that a parallel to the aforesaid criminal prosecution the respondent no.4 -Dr. Bhagwan Das Gupta, C.J.M. in order to mount pressure upon the petitioners, filed a complaint before the 'District Consumer Disputes Redressal Forum, Lucknow', registered as Complaint Case No.01 of 2013 and said complaint was dismissed vide order dated 17.2.2014. This order was challenged by the Respondent no.4 before the 'Electricity Ombudsman Lucknow', registered as Representation No.85 of 2014. The said 'Electricity

Ombudsman' vide order dated 7.8.2014 dismissed the representation as he has failed to comply with the mandatory provision to deposit certain percentage of total outstanding amount.

Thus, it is clear that the C.J.M.-Respondent no.4 was trying hard to any how launch a criminal prosecution against the petitioners so as to harass them, though they themselves are government servants. But when Respondent No.4 failed to attain his objective at Lucknow, then he decided to cook up fake story and after auctioning his chair and position as C.J.M., Banda any how managed to lodge the F.I.R. against the petitioners, whose informant was Dr. Bhagwan Das Gupta, C.J.M., Banda as Case Crime No.606 of 2023 at P.S. Kotwali, Banda u/s 406, 409, 419, 420, 464, 467, 468, 471, 386 I.P.C. This fact itself speaks volumes about the hidden objective, design and ill motive of Respondent no.4. It is not expected from a C.J.M. that he would use his office and the chair to subserve his personal interest against the petitioners. It is unheard off, that a sitting Chief Judicial Magistrate is acting as an ordinary litigant so as to trap the officials of Electricity Department by initiating a criminal proceeding against them, who probably have declined the Respondent No.4 to serve his interest. Now by twisting their arms, Shri Bhagwan Das Gupta, C.J.M. (Respondent no.4) wants to kneel down these petitioners before him so that the petitioners should ignore the outstanding bill accrued over the previous electricity connection and order new electricity connection on his residential premises owned by him. It means, by extending the threats of proposed criminal case, the petitioners should betray the department and cheat the coffers of State. This seems to be sole motive and objective of Respondent no.4 for initiating the criminal case against them.

9. In paragraph 12 of the petition the petitioners have spelled out the various applications, site inspection report, queries raised by the

department, outstanding dues and the steps taken by the department on the application made by respondent no.4. At the end, it has been mentioned that the demand made on 24.6.2023 by the department, the electricity dues were swelled from Rs.1,66,916/- to Rs.2,19,063/- for the intervening period. The said executive engineer has conducted site inspection of aforesaid premises on 17.7.2003 and found that the electricity meter installed for connection no.4104390000 was missing from the place where it was originally installed.

10. Most shocking and startling feature of the case, the Respondent no.4, after loosing legal battle at Lucknow, stoop down to the level when he started hobnobbing and conniving with Dan Bahadur Pal, S.I., P.S. Kotwali, Banda so that he should lodge an F.I.R. at Banda, where Respondent no.4 is posted as C.J.M. This is *per se* unholy and unethical relationship between a C.J.M. on one hand and Sub Inspector on the other hand. After loosing the legal battle at Lucknow, thereafter District Consumer Forum, Lucknow and denying any relief from the Electricity Ombudsman, the Respondent no.4 C.J.M., Banda has came down to the level whereby he has virtually auctioned his chair and position as C.J.M. while prevailing upon the S.H.O., Kotwali Banda to lodge an F.I.R. against the petitioners. Annexure-9 and Annexure-10 are the glaring example of such type of sub-standard activity on the part of Respondent no.4. The screen shot of whatsapp messages between the concerned Sub Inspector and petitioner no.1, annexed as Annexure-9, speaks volume about the pressure exerted by the Respondent no.4 C.J.M. on the concerned S.I. This is the exceptional example of misuse of one's office and position to extend the threats of criminal prosecution against the petitioners.

This Court is constrained to deprecate, reprimand and condemn this practice in the strongest term to this conduct of Respondent no.4,

C.J.M., Banda for exerting pressure upon the concerned S.I. so as to lodge the F.I.R.

This is an unbecoming of a C.J.M. of the district. When the concerned C.J.M., as mentioned above, lost his case at Lucknow, then in its second innings, he has successfully prevailed upon the S.I. named above to lodge the F.I.R., making all sorts of wild and venomous allegations against the petitioners for alleged act of fraud, cheating, fabricating the documents and extortion of money against the petitioners.

11. The Court has perused the contents of F.I.R. in which it has been stated that on 17th June, 2023 the informant has applied for electricity connection vide application no.1013441101. It is alleged that after 5-6 days he has received a call from one Rakesh projecting him as employee of Electricity Department from Lucknow on informant's mobile number 9450095802, demanding from him Rs.20,000/- for the electricity connection at the behest of Executive Engineer and S.D.O., GSI Aliganj, Lucknow. On this, he asked his younger brother Anand Kumar Gupta to hand over Rs.20,000/- but instead of giving a regular connection the petitioners has produced a forged electronically generated document demanding Rs.2,19,063/- as outstanding sum from his old connection.

At this juncture Shri Baleshwar Chaturvedi, learned *Amicus Curiae* and permanent counsel for the Electricity Department, submits that no second connection as desired by Respondent no.4 would be allowed on the same residential premises, till the outstanding sum for the earlier connection is not cleared-off.

It seems that the respondent no.4 is mixing two different issues:- unless and until the outstanding amount on the earlier electricity

connection no.4104390000 is not cleared off, how a new connection would be allotted to the same residential premise?

12. Learned counsel for petitioners has drawn attention of the Court to inter office communication written by Superintendent Engineer to the Executive Engineer on 5.8.2023, a relevant excerpt of the communication reads thus :

> *"अधोहस्ताक्षरी को अवगत हुआ कि डा० भगवान दास गुप्ता, सी०जे०एम०, बांदा ने पुनः अधोहस्ताक्षरी पर बिना बकाया का पैसा जमा कराये, बकाया परिसर पर विद्युत कनेक्शन देने हेतु दबाव बनाने के लिए अपने सरकारी शक्ति का दुरुपयोग करते हुए गलत आरोप लगाते हुए कोतवाली बांदा में दिनांक 27.07.2023 को अधिशासी अभियन्ता, उपखण्ड अधिकारी, अवर अभियन्ता, लाईन मैन के विरुद्ध विभिन्न धाराओं में मुकदमा पंजीकृत कराया है तथा अपने कार्यरत जनपद पर ही स्थापित कोतवाली थाने के उपनिरीक्षक पर यह दबाव बना रहे है कि इन सब को गिरफ्तार कर लिया जाये एवं दिनांक 04.08.2023 को उपनिरीक्षक कोतवाली बांदा श्री दान बहादुर पाल इस कार्यालय में पड़ताल हेतु आये भी थे।"*

This communication speaks volume about the Respondent no.4, Dr. Bhagwan Das Gupta who was out and out to exert duress, threat and coercion upon the petitioners, after auctioning his own dignity, honour and reputation with sole objective to compel the petitioners to serve his financial interest and wife-off the outstanding and issue an order for fresh connection.

13. In paragraph 20 of the petition regarding the allegation of paying Rs.20,000/- is concerned, is false and fabricated just to create a false criminal case against the petitioners as argued by the counsel for petitioners. Neither any date nor place has been mentioned in the F.I.R. Who is this Rakesh Kumar and under what capacity he was demanding the amount is a million dollar mystery. The C.J.M. has fasten a wild allegation against senior officials of the electricity department.

14. So far as the electricity dues of Rs.2,19,063/- is concerned, it relates to the aforementioned electricity connection which is genuine and electronically generated from the computerized system and the query dated 26.4.2023 on the application is perfectly valid and genuine. The petitioners have raised this demand of outstanding sum in

the discharge of their official duty. On these grounds, it is contended by learned counsel for petitioners, that no offence under Sections 406, 419, 420, 464, 467, 468, 471, 386 I.P.C. is made out against the petitioners.

15. It is further argued by learned counsel for petitioners that the C.J.M. misusing the powers as such has prevailed upon the poor Sub Inspector of Police Station Kotwali, Banda and succeeded in lodging the F.I.R. which is nothing but a gross, blatant and naked misuse of power. The action of the petitioners is protected under Section 168 of the Electricity Act, 2003 that anything done in good faith purporting to be done in this Act or Rules, regulations made underunder by any public servant would not be subjected for criminal prosecution.

16. Per contra, a counter affidavit was filed and signed by the respondent no.4 himself in which he has spelled out number of factual aspects of the issue and letter correspondence with the department which cannot be adjudicated in exercise of power under Article 226 of the Constitution of India. By these correspondences with the department, the Respondent no.4 wants to impress upon the Court, that he has been cheated by the hands of petitioners who are officials of Electricity Department.

17. During argument, it has been surfaced that from the date of purchase of said premises i.e. 3.8.2009 till date the Respondent no.4 has paid a meagre sum of around Rs.5,000/- only in last 14 years. This *per se* is own admission of Respondent no.4 during argument. This is indeed shocking and surprising that in this period of 14 years the respondent no.4 has paid only Rs.5000/- (approx). On making a query during argument, learned counsel for respondent no.4 states that he is using solar power for his daily consumption. It is unswallowable that Respondent no.4, who is C.J.M., has paid Rs.5000/- only without having any Permanent Disconnection of the electricity connection and

has paid only Rs.5000/- on the false pretext that he is using solar panel for his daily use. Without having Permanent Disconnection (P.D.C.) or giving application in this behalf asking for P.D.C., the Electricity Department is well within their rights to levy minimum electricity bill on the old connection. Respondent No.4, as mentioned above, has paid Rs.5000/- from the date of purchase of the house till forced P.D.C. was done by the Department in 2021. It is simply amusing that a consumer has paid Rs.5000/- without any P.D.C. for more than a decade.

18. During argument this Court, on 24.8.2023 has given a direction for constituting a S.I.T. to hold a preliminary investigation into the matter. Accordingly, S.I.T. led by (i) Mr. Abdul Hameed, D.I.G., A.N.T.F., U.P. Lucknow; and (ii) Shri Atul Sharma, Senanayak, 24 Battalion P.A.C., Moradabad and (iii) Shri Ram Kishun, S.P. Vigilance Lucknow are the members of the said S.I.T. While passing the Court have formulated following queries for which the probe was supposed to be required, they are :

> *(a) whether any cognizable offence is made out against the petitioner or not;*
>
> *(b) whether respondent no.4 has misused his power and position as the C.J.M., Banda;*
>
> *(c) whether alleged transaction of Rs.20,000/- was ever given by the respondent to a person named as Rakesh and its receipt as alleged in the F.I.R.;*
>
> *(d) whether demand notice of Rs.2,10,063/- is forged document;*
>
> *(e) what are the past credentials of respondent no.4 as judicial officer?*
>
> *(f) whether the respondent no.4 has taken into confidence or taken prior permission from the learned District Judge, Banda before lodging of the F.I.R.*

19. The said S.I.T. during threadbare investigation have recorded the statement of Shri Dan Bahadur, I.O. of Case Crime No.605 of 2023 (State vs. Manoj Kumar Gupta), in which he states before the S.I.T. :

"श्री दानबहादुर पुत्र स्व० प्रभुनाथ पाल निवासी ग्राम ढेढरा थाना माण्डा जनपद प्रयागराज पीएनओ–882310277 मो०नं०–8400874647 हाल पता ओपी सिविल लाइन्स थाना कोतवाली नगर जनपद बाँदा–

साक्षी ने बताया कि मैं पंजीकृत मु०अ०सं० 605/2023 बनाम मनोज गुप्ता का विवेचक हूँ। उक्त अभियोग की विवेचना में दिनांक 29.07.2023 को बयान वादी अंकित करने के दिन वादी मुकदमा श्री भगवानदास गुप्ता द्वारा विवेचना में पदीय दबाव बनाते हुये इनके द्वारा कहा गया कि पहले मुलजिम को गिरफ्तार कर कोर्ट में पेश करो। कल रविवार है, कोर्ट मेरी है, रिमाण्ड मजिस्ट्रेट बैठेगें। पुनः दिनांक 07.08.2023 को न्यायालय में बुलाया और कहा कि गिरफ्तारी करिये वरना अभियुक्तगण हाईकोर्ट चले गये तो तुम्हारे लिये ठीक नही होगा तब मैंने अपनी वापसी में दिनांक 07.08.2023 के रोजनामचा आम में तस्करा अंकित किया।"

This statement of Mr. Dab Bahadur has completely exposed the nature and conduct of the C.J.M., Banda to its hilt.

20. The S.I.T. after thrashing the material collected during investigation has given a candid report to the queries made by this Court pointwise, which is quoted herein under :

"मा० उच्च न्यायालय द्वारा पारित आदेश दिनांक 24.08.2023 के क्रम में वांछित 06 बिन्दुओं पर अन्तरिम आख्या निम्नवत् हैः–

बिन्दु संख्या–1 : ***(a) whether any cognizable offence is made out against the petitioners or not;***

(क्या याचिकाकर्ता के विरुद्ध कोई संज्ञेय अपराध घटित हो रहा है कि नहीं।)

विशेष अनुसंधान दल द्वारा अब तक लिये गये अभिलेखीय एवं मौखिक साक्ष्य के विश्लेषण से सादर अवगत कराना है कि श्री भगवानदास गुप्ता द्वारा दिनांक–27.07.2023 को मु0 अ 0 सं0–605/2023 धारा–406, 409, 419, 420, 464, 467, 468, 471, 386 भा० दं० वि० कोतवाली बाँदा में पंजीकृत कराया था। मुकदमा वादी ने अपने अभिकथन में दिनांक–18.09.2023 को अवगत कराया गया कि उनके द्वारा विद्युत संयोजन हेतु दिनांक 17 जून 2023 को आनलाइन आवेदन किया था तथा उनके मोबाईल पर दिनांक–20.06.2023 को राकेश नाम के व्यक्ति का फोन आया कि उक्त आवेदित संयोजन पर भवन निरीक्षण किया जाना है तथा संयोजन शुल्क 20 हजार रूपयें बताया गया। वादी द्वारा बताया गया कि दिनांक–23/24.06.2023 को राकेश लेसा कर्मचारी द्वारा फोन किया गया कि भवन निरीक्षण हेतु आना है एवं संयोजन शुल्क 20 हजार रूपयें की मांग की गयी जिसके सम्बन्ध में मैने अपनी पत्नी को फोन किया कि आनन्द से कहो 20 हजार रूपया देकर राकेश से रसीद ले ले। आनन्द ने अपने पास से 20 हजार रूपये राकेश लेसा कर्मचारी को दिनांक–23/24.06.2023 मकान नंबर उपरोक्त पर देना बताया है। कूट रचित इलेक्ट्रानिक दस्तावेज एवं मनोज गुप्ता अधिशाषी अभियन्ता द्वारा अपने पत्र के माध्यम से बिल की मांग कर उद्यापन करने के आरोप के सम्बन्ध में अब तक की विवेचनात्मक कार्यवाही में साक्षियों के बयान एवं अभिलेखों के सत्यापन एवं स्थलीय निरीक्षण एवं सीडीआर के विश्लेषण से पाया गया कि–

1– उक्त अभियोग में प्रतिवादी राकेश सिंह के द्वारा अपने मो0 नं0–9452202530 से वादी मुकदमा श्री भगवानदास गुप्ता के मो0 नं0–9450095882 पर दिनांक 20.06.2023 को वार्ता का होना नहीं पाया गया।

2– वादी मुकदमा द्वारा अपने भाई आनन्द से राकेश नाम व्यक्ति को विद्युत संयोजन के लिये 20000/–रू० दिनांक 23/24.06.2023 को देना बताया गया है जब कि राकेश प्रताप सिंह के मो0 नं0–9452202530 के सीडीआर का विश्लेषण किया गया तो उक्त तिथि को राकेश प्रताप सिंह कथित घटनास्थल की सेल आईडी में मौजूद नहीं थे।

3– श्री आनन्द गुप्ता ने कथन में अंकित कराया है कि दिनांक–23/24.06.2023 को मेरी पत्नी ने मेरे मो0 नं0–8115526929 पर समय लगभग 18:00 से 19:00 बजे के बीच में मेरे भाई शुभम गुप्ता के मो0 नं0–8299440809 पर बात कर बताया कि बिजली वाले आये हैं एवं उपरोक्त आनन्द गुप्ता एवं शुभम गुप्ता के मोबाईल डिटेल सीडीआर का विश्लेषण किया तो उभयपक्षों के बीच दिनांक–22.06.2023 से दिनांक–24.06.2023 तक कोई वार्ता नहीं हुई है और आनन्द गुप्ता के मोबाईल की सेल आईडी कथित घटनास्थल से काफी दूर थी। एवं शुभम गुप्ता के मोबाईल की लोकेशन कथित घटना के समय घटनास्थल से लगभग 15–20 किमी दूर थी।

4– आरोपी राकेश प्रताप सिंह के बयान में आया है कि वह दिनांक –22.06.2023 को समय लगभग 18:00 से 19:00 बजे के बीच सर्वे करने के लिये उपरोक्त आवास पर गया था तथा मकान नम्बर ईएस–1–बी/23 ए सीतापुर रोड योजना अलीगंज थाना मड़ियांव कमिश्नरेट लखनऊ का पता न मिलने पर आवेदक के नंबर–9450095802 पर वार्ता कर पता पूछकर गया था और वहाँ एक मात्र महिला मिली थी। उक्त कथन की पुष्टि हेतु राकेश प्रताप सिंह के मो 0 नं0–9452202530 से वादी मुकदमा के मो०नं०–9450095802 के सीडीआर के विश्लेषण से पाया गया कि उपरोक्त नंबर से उपरोक्त तिथि में समय 18:26 मिनट पर वार्ता हुयी है। जिसकी सर्वे के लिये आने की पुष्टि पूंछतांछ में आनन्द की पत्नी रचना ने भी की है।

इस प्रकार विवेचना के क्रम में आये साक्ष्यों से यह प्रमाणित हो रहा है कि विद्युत संयोजन के लिये सर्वे के समय राकेश प्रताप सिंह, संविदाकर्मी (लाइनमैन) जो दिनांक–22.06.2023 को गया था उस समय राकेश को रचना गुप्ता पत्नी श्री आनन्द गुप्ता मिली थी। मौके पर आनन्द गुप्ता, शुभम गुप्ता आदि कोई मौजूद नहीं थे इसलिए वादी के भाई श्री आनन्द गुप्ता द्वारा रू0 20,000/– विद्युत संयोजन हेतु देने के औचित्य के पुष्टिकारक साक्ष्य प्राप्त नहीं हुए है।

वादी द्वारा आरोपित किया गया है कि श्री मनोज गुप्ता, अधिशाषी अभियन्ता, लखनऊ आदि द्वारा कूट रचित इलेक्ट्रानिक दस्तावेज पर रू0 2,19,063–00 की मांग की जा रही है एवं अपने पत्र दिनांक–18.07.2023 के माध्यम से बिल की भिन्न–भिन्न राशि मांग कर उद्यापन करने विषयक आरोप के सम्बन्ध में अब तक की विवेचनात्मक कार्यवाही में साक्षियों के बयान, अभिलेखों के सत्यापन, स्थलीय निरीक्षण एवं सीडीआर के विश्लेषण से पाया गया कि तथाकथित कूटरचित इलेक्ट्रानिक अधोलिखित दस्तावेज जो वादी मुकदमा द्वारा संदीप तिवारी, निरीक्षक थाना गिरवां के मो0 नं0–9454403038 से मो0 नं0–9450095802 पर जरिये व्हॉट्स–अप द्वारा श्री संदीप तिवारी, निरीक्षक के आग्रह पर अधिशाषी अभियन्ता, लखनऊ श्री मनोज गुप्ता से प्राप्त हुआ था। मनोज गुप्ता, अधिशाषी अभियन्ता के पत्र दिनांक 18.07.2023 का सत्यापन एसआईटी टीम द्वारा विवेचना के दौरान लेसा कार्यालय जाकर किया गया तो उपरोक्त इलेक्ट्रानिक अभिलेख लेसा कार्यालय के आनलाइन पोर्टल पर मूलरूप में मौजूद हैं जो कथित कूटरचित इलेक्ट्रानिक दस्तावेज उपरोक्त से मिलान करने पर कूटरचित नहीं होना पाया गया, बल्कि पूर्णतया सत्य पाये गये एवं अधिशाषी अभियन्ता के पत्र उपरोक्त का सत्यापन किया गया तो पत्र भी मूलरूप में पत्रावली पर कार्यालय प्रति के रूप में पाया गया। जिसमें अंकित ***विद्युत बिल की धनराशियों उनके आनलाइन पोर्टल पर वर्षवार अंकित पायी गयी एवं अधिशाषी अभियन्ता द्वारा पदीय दायित्वों के निर्वहन में पत्र जारी किया गया था। अतः अभिलेख सत्य पाये गये जिसमें किसी भी तरीके की कूटरचना का होना नहीं पाया गया है। इस प्रकार वादी मुकदमा द्वारा पंजीकृत मु0 अ0 सं0–605/2023 धारा–406/409/419/420/ 464/467/468/471/386 भादवि थाना कोतवाली नगर जनपद बाँदा में अब तक की गयी विवेचनात्मक कार्यवाही में प्रथम दृष्टया किसी संज्ञेय अपराध का होना नहीं पाया जा रहा है। साक्ष्य संकलन हेतु विवेचना प्रचलित है।***

<u>बिन्दु संख्या–2 :</u> (b) whether respondent no.4 has misused his power and position as the C.J.M. Banda;

(उक्त रिट याचिका में प्रतिवादी नं0–4 के द्वारा सी०जे०एम० बांदा रहते हुए अपनी शक्ति व पद का दुरूपयोग किया है कि नहीं।)

मा० उच्च न्यायालय इलाहाबाद के आदेश के बिन्दु उपरोक्त के सम्बन्ध में जॉच की गयी तो सी०जे०एम० प्रायोजित तरीके से निम्न अवैधानिक कृत्य कराये गये है– बाँदा के पद पर रहते हुये श्री भगवानदास गुप्ता द्वारा अपने पद व शक्ति का दुरूपयोग करते हुये योजनाबद्ध एवं प्रायोजित तरीके से निम्न अवैधानिक कृत्य कराये गये हैं–

1–इनके द्वारा मु०अ०सं०–605/2023 धारा–406/409/419/420/464/467/468/471/386 भादवि थाना कोतवाली नगर जनपद बाँदा विरूद्ध अधिशाषी अभियन्ता, लखनऊ आदि 2 नफर पंजीकृत कराया गया था।

2–उपरोक्त पंजीकृत अभियोग में बगैर साक्ष्य संकलन के विवेचक श्री दानबहादुर पाल उ०नि० कोतवाली नगर बॉदा को धमकाकर आरोपीगणों की गिरफ्तारी हेतु पदीय दबाव बनाया जिसका तस्करा विवेचक द्वारा ***रो०आ० दिनांक–07.08.2023 समय 20:06 बजे निम्न प्रकार अंकित है– "दौरानें विवेचना थाना स्थानीय के मु0अ0सं0–605/2023 धारा–406/409/419/420/464/467/468/471/386 भादवि के वादी मुकदमा डॉ० भगवानदास गुप्ता द्वारा अपने कोर्ट मोहर्रिर के मोबाईल से मुझ विवेचक को बुलाकर दबाव बनाया जा रहा है कि अभियुक्तगणों की तत्काल गिरफ्तारी करो अगर गिरफ्तारी नही हुई और अभियुक्तगण हाईकोर्ट चले गये तो मैं तुम्हारे विरूद्ध कठोर से कठोर सजा लिखूँगा। आज पुनः सीजेएम महोदय द्वारा चेम्बर में बुलाकर कहा गया कि अभियुक्तों की गिरफ्तारी क्यों नही कर रहे हो तुम मुझे जानते नही हो मैं तुम्हे एवं तुम्हारे थाने व कोतवाल को ठीक कर दूँगा। तथा अपने प्रभारी निरीक्षक को अवगत कराओ कि तत्काल आकर मुझसे सम्पर्क करो मैं पूर्व में भी कई बार प्रभारी कोतवाली नगर को बता चुका हूँ फिर भी मेरे मुकदमें में कार्यवाही क्यो नही हो रही है। और सीजेएम महोदय ने बताया कि विवेचना में यदि लापरवाही किये तो तुम्हारे खिलाफ विवेचना का आदेश मैं कर दूँगा इस प्रकार सीजेएम महोदय द्वारा कई बार अपने कोर्ट मोहर्रिर के मोबाईल से बुलाकर चेतावनी दी जा रही है। मुझ विवेचक को स्वतन्त्र रूप से विवेचना करने का मौका नही दिया जा रहा है।"***

3–एस०डीओ० देवव्रत आर्य जनपद बॉदा द्वारा बताया गया कि आवास संख्या जे0–12 न्यायालय परिसर बाँदा में पूर्व आवासित न्यायधीश श्री नितिन सिंह द्वारा अपने स्थानान्तरण पर विद्युत संयोजन विच्छेदित करने हेतु आवेदन किया गया था। इस क्रम में नियमानुसार विच्छेदित करने गये कर्मियों को पद का दुरूपयोग करते हुये सी०जे०एम० श्री भगवानदास गुप्ता द्वारा पुलिस बुलाकर थाने में बैठा दिया गया और विच्छेदित मीटर को भी विद्युत कर्मियों को नहीं दिया गया।

4–एस०डीओ० देवव्रत आर्य जनपद बाँदा द्वारा यह भी बताया गया कि सी०जे०एम० बाँदा श्री भगवानदास गुप्ता जो म०नं०–जे०–12 न्यायालय परिसर बाँदा में आवासित रहे थे, के द्वारा अपने पदीय दबाव में विद्युत का उपभोग नियमित रूप से किया जा रहा था, किन्तु अपने नाम पर विद्युत संयोजन नहीं लिया गया था, जिसकी पुष्टि सीजेएम महोदय के मजीद बयानों से भी हुई है।

5– प्रभारी निरीक्षक मनोज कुमार शुक्ला, कोतवाली नगर बाँदा एवं संदीप कुमार तिवारी, प्रभारी निरीक्षक गिरवा द्वारा बताया गया कि जो भी अभियोग उपरोक्त पंजीकृत किया गया है एवं अधिशाषी अभियन्ता से वार्ता कर अभिलेख मेरे द्वारा मांगे गये है वह सीजेएम महोदय के पदीय प्रभाव में किया गया है।

इस प्रकार उपरोक्त बिन्दु की जांच से स्पष्ट रूप से पाया गया कि श्री भगवानदास गुप्ता, सीजेएम बाँदा द्वारा अपने पदीय शक्ति व पद का दुरूपयोग करते हुये अवैधानिक तरीके से अभियोग पंजीकृत कराया गया है। इसी क्रम में उक्त अभियोग में विवेचक को अवैधानिक विवेचनात्मक कार्यवाही हेतु धमकाया गया है एवं बिना विद्युत संयोजन लिये विद्युत का उपभोग अपने आवास संख्या जे०–12 न्यायालय परिसर बाँदा में किया गया।

<u>बिन्दु संख्या–3</u> *:(c) whether alleged transaction of Rs.20,000/– was ever given by the respondent to a person named as Rakesh and its receipt;*

(क्या प्रतिवादी द्वारा 20000/– रूपयें का कथित लेन–देन राकेश नाम के व्यक्ति को किया गया और इसकी रसीद ली गयी कि नहीं।)

उक्त विन्दु के सम्बन्ध में प्रथम सूचना रिपोर्ट में यह आरोप लगाया गया है कि वादी मुकदमा के भाई श्री आनन्द गुप्ता द्वारा दिनांक–23/24.6.2023 को कनेक्शन के सर्वे के समय राकेश के आने पर श्री आनन्द गुप्ता द्वारा 20,000/–रू० राकेश को दिया था जिसका विवेचना के दौरान प्राप्त साक्ष्य एवं मोबाईल नंबर की सीडीआर का विश्लेषण किया गया तो पाया गया कि उक्त तिथि को लाइनमैन राकेश सर्वे के लिये उक्त भवन पर नहीं गया था अपितु वह दिनांक –22.06.2023 को समय 18:00 से 19:00 के बीच में में गया था उसकी पुष्टि राकेश के मोबाईल नंबर से भी हो रही है। साथ ही श्री आनन्द गुप्ता के मो0 नं0–8115526929 एवं शुभम गुप्ता के मो0 नं0–8299440809 का विश्लेषण किया गया तो उपरोक्त दोनों लोगों की दिनांक –22.06.2023 से लेकर दिनांक–24.06.2023 तक कथित घटना के समय लोकेशन कथित घटनास्थल से दूरस्थ थी एवं शुभम गुप्ता

का लोकेशन कथित घटनास्थल से लगभग 15–20 किमी दूर थी एवं आपस में एक–दूसरे के नंबर से कोई वार्ता नही है, जो कथन के मुताबिक विरोधाभासी है।

इस प्रकार विवेचनात्मक विश्लेषण से किसी भी प्रकार से 20000/–रू0 के लेनदेन के कोई पुष्टिकारक साक्ष्य नही पाये जा रहे हैं, न ही किसी रसीद के साक्ष्य मिले हैं।

<u>बिन्दु संख्या–4</u> *:(d) Whether demand notice of Rs.2,10,063/– is forged document;*

(क्या डिमाण्ड नोटिस रू0 2,10,063/– जाली दस्वावेज है कि नहीं।)

उपरोक्त इलेक्ट्रानिक अभिलेख एवं अधिशाषी अभियन्ता के पत्र सं0 3678 दिनांक–18.07.2023 द्वारा श्री भगवान दास गुप्ता से परिसर पर पूर्व संयोजन के बकाये एवं धनराशि के पुनः निर्धारण के सम्बन्ध में निर्गत किया गया था जिसमें कुल धनराशि 2,19,063 रू० दर्शाया गया है एवं जिसमें दिनांक 28.09.2015 तक का कुल बिल 2,11,998 रू० है एवं उक्त आवास का स्थायी रूप से विद्युत विच्छेदन दिनांक 29.12.2021 को किया गया उस समय कुल बिल राशि 2,19,063 रू० थी। उक्त डिमाण्ड नोटिस का अभिलेखीय सत्यापन एसआईटी टीम द्वारा विवेचना के दौरान लेसा कार्यालय जाकर किया गया तो उपरोक्त इलेक्ट्रानिक अभिलेख लेसा कार्यालय के ऑनलाइन पोर्टल पर मूलरूप में मौजूद है जो कथित इलेक्ट्रानिक दस्तावेज उपरोक्त से मिलान करने पर पूर्णतया सत्य पाये गये एवं अधिशाषी अभियन्ता के पत्र उपरोक्त का सत्यापन किया गया, तो पत्र भी मूलरूप में पत्रावली पर कार्यालय प्रति के रूप में पाया गया जिसमें अंकित विद्युत बिल की धनराशियों उनके ऑनलाइन पोर्टल पर वर्षवार अंकित पायी गयी एवं अधिशाषी अभियन्ता द्वारा पदीय दायित्वों के निर्वहन में पत्र जारी किया गया था। मा० न्यायालय के आदेश में बिन्दु सं० 04 पर अंकित धनराशि 2,10,063 रू0 की बजाये पत्र में 2,19,063 रू0 पायी गयी है जो उनके पोर्टल पर भी मूल रूप में उपलब्ध है।

अतः अभिलेख सत्य पाये गये जिसमें किसी भी तरीके की कूटरचना का होना नहीं पाया गया है।

<u>बिन्दु संख्या–5</u> *: (e) what are the past credentials of respondent no.4 as judicial officer ?*

(रिट याचिका में प्रतिवादी संख्या–4 बतौर न्यायिक अधिकारी की पूर्ववर्ती आम शोहरत की जॉच।)

विन्दु सं० 05 के सम्बन्ध में विवेचना के दौरान आये साक्ष्यों से यह प्रकाश में आया कि श्री भगवानदास गुप्ता द्वारा सिविल जज सीनियर डिवीजन बांदा के पद पर रहते हुये मु०अ०सं 396/2023 धारा– 420,467,468,406 भादंवि थाना कोतवाली सदर बांदा में अपने छोटे भाई आशीष गुप्ता की पत्नी श्रीमती प्रियंका गुप्ता के द्वारा अपने निवास–जे–12 न्यायालय परिसर के पते को दर्शाते हुए पंजीकृत कराया गया था <u>जबकि उपरोक्त मामले का सम्बन्ध नई दिल्ली व नोयडा से था। वादिनी की मोबाईल लोकेशन घटना के दिन, घटनास्थल वाले जनपद बाँदा में ही नहीं थी। बतौर न्यायिक अधिकारी यह प्रकरण उनके परिवार का व्यक्तिगत प्रकरण था जिसे अपने पदीय प्रभाव में थाना कोतवाली नगर जनपद बांदा के प्रभारी निरीक्षक पर दबाव बनाकर पंजीकृत कराकर विवेचक को बिना साक्ष्य सकंलित किये नामित अभियुक्तों की गिरफ्तारी हेतु दबाव बनाते हुये एन०बी०डब्लू० का वारण्ट जारी कराया गया, किन्तु उपरोक्त प्रकरण की सम्पूर्ण जानकारी होने के बावजूद विवेचना के दौरान अपने अभिकथन में मुकदमा उपरोक्त से सम्बन्धित तथ्यों के विषय में अनभिज्ञता जाहिर की गयी</u>।

इस प्रकार उक्त बिन्दु की जांच से पाया गया कि श्री भगवान दास गुप्ता द्वारा बतौर न्यायिक अधिकारी रहते हुये अपने पारिवारिक मामले में पदीय दबाव में मुकदमा पंजीकृत कराया जाना अवैधानिक था तथा इनकी पूर्व नियुक्तियों जनपद–सुल्तानपुर, सीतापुर, अयोध्या आमशोहरत एवं कार्य आचरण के सम्बन्ध में साक्ष्य संकलन की कार्यवाही शेष है।

<u>विन्दु संख्या–6</u> *(f): Whether the respondent no.4 has taken into confidence or taken prior permission from the learned District Judge, Banda before lodging of the FIR.*

(क्या प्रतिवादी संख्या–4 द्वारा एफआईआर दर्ज करने से पूर्व विद्वान जिला न्यायाधीश, बॉदा को विश्वास में लिया गया था या पूर्व अनुमति ली गयी थी की जांच ।)

उपरोक्त विन्दु के सम्बन्ध में मा० न्यायालय को अवगत कराना है कि इस सम्बन्ध में मा०जिला न्यायाधीश जनपद बांदा की प्राप्त आख्या दिनांक 27.09.2023 के माध्यम से अवगत कराया गया है कि कार्यालय में अनुरक्षित पत्रावली के अवलोकन से स्पष्ट होता है कि वादी मुकदमा डा० भगवान दास गुप्ता द्वारा प्रथम सूचना रिपोर्ट अंकित कराने से पूर्व ***लिखित रूप से कोई अनुमति प्राप्त नहीं की गयी थी।*** *उनके द्वारा मौखिक रूप अनुमति प्राप्त की गयी थी अथवा नहीं, या जिला जज को विश्वास में लिया गया था अथवा नहीं, इस सम्बन्ध में तत्कालीन जिला जज ही जानकारी दे सकते हैं।*

जिला जज, संभल एट चन्दौसी (तत्कालीन जिला जज बाँदा) द्वारा अवगत कराया गया कि उनके कार्यकाल में डा० भगवान दास गुप्ता द्वारा उक्त प्रकरण के सम्बन्ध में उन्हें कभी सूचित नहीं किया गया और न ही मौखिक या लिखित रूप से कोई अनुमति प्राप्त की गयी थी।"

21. From the aforesaid inquiry report, as mentioned above the conduct and character of respondent no.4 Dr. Bhagwan Das Gupta, C.J.M. is exposed to the core and the S.I.T. in its report after holding threadbare investigation have come out every allegation made in the F.I.R. against the accused-petitioners is false, motivated and purposive. All the concerned witnesses in their respective statements have unequivocally accused Respondent no.4 for exerting pressure upon them, after misusing his powers as C.J.M., Banda.

22. The judicial office is essentially a public trust. Society is, therefore, entitled to except that a Judge must be a man of high integrity, honesty and required to have a moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standard of conduct and rectitude from a Judge. Unwritten code of conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome standard of conduct, which would generate public confidence, accord dignity to the judicial office and enhance public image, not only the Judge but the court itself. It is therefore basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in

tune with the highest standard of the propriety and probity. The standard of conduct is higher than expected from a layman and also higher than expected of an advocate. In fact, even his private life must adhere to high standard of propriety and probity, higher than those deemed acceptable for others.

23. The Judges are also public servant and under the gaze of public at large. They should always remember that they are to serve the public and not for their personal gains or objectives. A Judge is judged not only by his quality of judgements but also by the quality and purity of his private life and character. Impeccable integrity should be reflected both in public and personal life of a Judge. One who stands in judgment over others, should be incorruptible that is the high standard which is expected from a Judge. A Judge who himself wants to become a party in a proceeding then he must quit his office first, to maintain the standard of purity and unblemished character. It is not possible that he remain as a sitting Judge on one hand and after using his power prevail upon his subordinate officer to affect arrest his adversary.

In the present case, this exactly happen when Dan Bahadur, the I.O. of the case was made scapegoat to subserve the design of respondent no.4, as he clearly stated before the S.I.T.

24. Report from S.I.T., as mentioned above, have completely exposed the conduct of Dr. Bhagwan Das Gupta, C.J.M. and his level of functioning. If at all Dr. Bhagwan Das Gupta, C.J.M. is so keen and adamant to book the petitioners, then he must quit his office and the chair and thereafter contest the case like an ordinary litigant.

As mentioned above, the S.I.T. in its report to the Court which also extracted after thrashing various statements of all concerned and analysing various documents, the S.I.T. forms a *prima facie* opinion that no criminal case against the petitioner is made out.

25. This Court has no reason to ignore the report of S.I.T. and its conclusion and thus imbibing the same in toto we are of the considered opinion, that the F.I.R. does not disclose any offence as alleged and thus liable to be quashed and same has been procured by the C.J.M. after exerting threats upon the concerned S.I. of Kotwali, Banda.

26. Taking into account the *prima facie* findings and the material collected by the S.I.T., this Court is of the considered opinion that the present F.I.R. is driven by *malafides* and in the colourable exercise of power vested in respondent no.4 and thus we have got no hesitation to quash the F.I.R. exercising the extra ordinary powers of this Court under Article 226 of the Constitution of India.

27. At the very outset of the judgment, we have mentioned in Preface about the character, nature, conduct of a Judge, his position in the society, expectations of public at large from a Judge, his own public and private image and reputation and more importantly his own basic character which should be aboveboard having see through integrity and impeccable and spotless judicial character. The office of a Judge is full of responsibility as he is supposed to perform a divine job, but if we start comparing with the facts of the present case, we have got no hesitation to say that the conduct and character of Respondent No.4 Dr. Bhagwan Das Gupta is well short of those essential and basic characters, which mentioned above, rather unbecoming of a Judge. A judicial officer (Respondent no.4), as mentioned above, just to harass the petitioners who in discharging of their official duties were doing a government job entrusted to them, is proceeding to initiate a criminal case, so that the petitioners may kneel down before him and start dancing on his tune. If this is the standard of a Judge, then fate and future of subordinate judiciary is pitch dark and rudderless. He cannot be permitted to enjoy his position as C.J.M. and behave and act as an ordinary litigant. His own interest, it seems, is of

the paramount consideration, for which he can stoop down to any level. This Court, as mentioned above, has deprecated and reprehended his conduct in the strongest term and is in the complete disagreement with the action taken by Respondent no.4 against the petitioners.

Such type of conduct shall not be repeated in future by any of the judicial officer, except in the matter of grave and severe nature like murder, suicide, rape or other sexual offences, dowry death, decoity and in rest of the remaining cases, if any, judicial officer or Judge wants to become the first informant in his personal capacity in any F.I.R., he must take his concerned District Judge into confidence and after having the assent from the District Judge, he can become an informant of any F.I.R.

28. Taking into account the totality of circumstances, the impugned F.I.R. so lodged by Respondent No.4 Dr. Bhagwan Das Gupta dated 27.7.2023 as Case Crime No.605 of 2023, u/s 406, 409, 419, 420, 464, 467, 468, 471, 386 I.P.C., Police Station-Kotwali, District Banda, is hereby Quashed. The instant Writ Petition stands ALLOWED.

29. Let this judgment and order be circulated through the Registrar General of this Court to all sessions divisions of the State of U.P., apprising the District Judges and Judicial Officers not to permit any F.I.R. by a Judge/Judicial Officer, in their personal capacity to subserve their personal interest, except the cases of serious and heinous in nature viz; murder, dowry deaths, sexual offences/rape or dacoity.

30. Besides this, Registrar General of this Court is directed to keep the copy of this judgment in the dossier/service record of Dr. Bhagwan Das Gupta, C.J.M., Banda, Respondent no.4.

Order Date: 21.5.2024
M. Kumar