

Right to Honest and Efficient Governance (With Special Reference to Judicial Activism)



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ABSTRACT

Every one against whom there is reasonable suspicion of committing a crime has to be treated equally and similarly under the law and probity in public life is of great significance. The constitution and working of investigative agencies revealed the lacuna of its inability to perform whenever powerful persons were involved. For this reason a close examination of constitution of these agencies and their control assumes significance.

Keywords: compensation, illegal allotment of Petrol Pump, exemplary damages, Hawala Jain Diary Case, Vigilance Commissioner

Introduction:

No doubt, the overall control of the agencies and responsibility on their functioning has to be in the executive, but then a scheme giving a needed insulation from extraneous influences even of the controlling executive, is imperative. The court by actively holding that what is arbitrary is antithesis of rule of law enriched in art. 14 and that law and procedure prescribed thereby if are not just fair and reasonable are not law and procedure has evolved the right to honest and efficient governance in domain of Art. 14 and Art. 21.

Some following land mark judgment is as follows:

In DC Wadhwa v. Stste of Bihar¹ the right to honest and efficient governance has been held to be implied in rule of law and ultimately in right to life and personal liberty. In the instant case Prof. DC Wadhwa of the Gokhale Institute of politics and economics, Pune found that ordinance were issued and allowed to expire upon completion of the period of six weeks from the reassembly of the legislature and then again re-promulgated after the session of the legislature was over. Thus, ordinances continued for years without having been placed before the legislature. This practice was apparently in violation of provision of Art.213 of the constitution.

In common cause, A Registered Society v. Union of India² (known as Satish Sharma case) court entertained a petition filed by a social action org. known as common cause. The court founds that six of the allottees were related to various official working with the minister. One was the mother of minister's driver another was the relative of the private secretary to the minister; two were related to the additional. Private Secretary and one was the wife the additional private secretary. Two allottees were related to politicians one was the son of Mr. Buta Singh, who was the home minister and another was the son of Hollohan minister

in the state of Nagaland. The remaining seven allottees were member of the oil selection board or their relations. One of whom was the son of retired judge who happened to be the chairman of oil selection board .Justice Kuldeep Singh disgusted at such blatant nepotism said³.

The court ordered that all those allotments should cancel and that each of the petrol pumps should be disposed of by way of public auction. The original allottees could participate in auction and the petrol pumps should be allotted to the highest bidder. The court asked Sharma to pay Rs.50 lakh as compensation and also issued a show cause notice why he should not be prosecuted for criminal breach of trust .In another judgment the court laid down the law on the liability of a public servant for such misuse of power⁴.

In Shiv Tiwari v. Union of india⁵ a writ petition filed by a lawyer on the basis of a newspaper report about large scale out of turn allotment of government houses.

In this case the apex court found that minister concerned (Sheila Kaul) allotted govt. houses to friends or persons who were related to her servants. The court held that it was not only wholly arbitrary and a gross abuse of the discretion given to the minister but also a criminal breach of trust. The court asked her to pay Rs. 60 Lakh as exemplary damages.

In Vineet Narayan v. Union of India⁶ (known as Hawala Jain diaries case) court again mentioned the rule of law .the case pertains to the alleged payment of huge sums of Hawala money by Jain brothers to certain political leaders for official favors. Veneet Narayan a journalist and two advocates of Supreme Court filed Writ petition for ordering CBI enquiry into the allegations of bribery. In this case chief justice Verma reflected: Similarly, the supreme court has acted in the interest of 'rule of law' in a number of cases' filed by way of Public Interest Litigation and issued a series of directions in

the case of criminal cases against a former Prime Minister⁷, in the case of Bihar Fodder Scam, involving a Chief Minister Laloo Prasad Yadav⁸, and in case of accounts of political parties⁹.

In case *B. L. Wadhera v. Union of India*¹⁰, facts were that Bharat Yatra Kendra was a trust formed by Former Prime Minister of India, Mr. Chandrashekhar. The trust in the chairmanship of Mr. Chandreshekhar had manipulated the passage of resolutions of Gram Panchayat of Bhondsi in the state of Haryana resolving to gift it 600 acres land. The donation of land was for construction of a hospital and polytechnic college of women, instead of utilizing the land for said purpose, a sprawling farmhouse was built.

The court anguishing over the fact that about two-thirds of rural population which consisted of farm workers, small and marginal farmers, poor artisans and the unemployed agricultural laborer possessed hardly 15 to 20% of the total available land, the court quashed the gift in favour of the trust and mandated the giving of possession of the lands to the state and thereafter to the Gram Panchayat and said: "It is nothing except seeking personal glorification of the person concerned." Further other pronouncement in the field of good gov-

ernance the apex court in Centre for PIL v. Union of India¹¹, The Judgment in based on the recommendation dated 3rd Sep 2010 and the appointment. Shri P.J. Thomas: Shri P.J. Thomos of is accused no 8 in criminal case cc 6 of 2003 pending in the court a special judge, Thiruvananthpuram with respect to the offences under section 13(2) read with 13(1) (d) of the prevention of corruption Act, 1988 and under section 120-13 of the Indian penal code, according to the petitioners herein, Shri P.J. Thomos allegedly has played a big part in the cover up of the 2G spectrum allocation which mater is Sub Juice. In this case Supreme Court has quashed the appointment of Central Vigilance Commissioner. In this case Court held that the appointment of the post of the Central Vigilance Commissioner must satisfy not only the eligibility criteria of the candidate but also the decision making process o the recommendation.

Conclusion

It is well recognized principle that arbitrariness is antithesis of rule of law which embodies in it the right to the honest and efficient governance. In famous chief vigilance Thomas case, which known is of centre for PIL v. Union of India, where in the Supreme Court has quashed the appointment of formerly central vigilance commissioner.

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9. Common causes v. Union of India (1996)2 SCG 752
10. AIR 2002 SC 1913
11. AIR 2011 SC 1267