

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.8152 of 2013**

1. Narendra Mishra S/O Late Shiv Shankar Mishra, Resident of Mohalla - East Anandpuri, P.S. S.K. Puri, Distt. - Patna

.... .... Petitioner

Versus

1. The State Of Bihar Through The Commissioner Cum Secretary, Urban Development Department, Government Of Bihar, New Secretariat, Bailey Road, Patna
2. The Chief Administrator, Patna Municipal Corporation, Maurya Lok Complex, PS. - Kotwali, Distt. - Patna
3. The Deputy Administrator, Patna Municipal Corporation, Maurya Lok Complex, PS. - Kotwali, Distt. - Patna
4. The Executive Officer, Patna Municipal Corporation, New Capital Circle, Patna
5. The District Magistrate, Patna
6. The Sub - Divisional Officer, Patna Sadar, Distt. Patna
7. The Circle Officer, Sadar Circle, Patna
8. Sri Shailendra Singh ( Builder ), Maa Sharda Complex 1st Floor East Boring Canal Road, Patna
9. Sri Parichhan Singh S/O Late Sri Ramjee Singh Resident Of Mohalla - Anandpuri, P.. Sri Krishnapuri, Distt.- Patna (land owner of the disputed site)
10. The Registrar, Co-operative Society, Bihar

.... .... Respondents

With

**Civil Writ Jurisdiction Case No. 9574 of 2012**

1. Sunil Kumar Son Of Late Nand Kishore Prasad Singh Resident Of Mohalla- 7, H.F., Flat No. 2/29. Resident of H.I.G. Bahadurpur, Housing Colony, P.S. Agam Kuan, District - Patna, Pin - 800026
2. Shyam Nandan Prasad Sharma Son of Late Satya Narayan Thakur Resident of Mohalla- 7, H.F. Flat No. 2/38. Resident of H.I.G. Bahadurpur, Housing Colony, P.S. Agam Kuan, District - Patna, Pin - 800026
3. Anand Shankar Son of Sri Surendra Prasad Singh Resident of Mohalla- 7, H.F. 2/20. Resident of H.I.G. Bahadurpur, Housing Colony, P.S. Agam Kuan, District - Patna, Pin - 800026
4. Satrughan Prasad Singh Son Of Sri Lakhan Lal Resident Of Mohalla- 2/27. 7 H.F. Resident Of H.I.G. Bahadurpur, Housing Colony, P.S. Agam Kuan, District - Patna, Pin - 800026

5. Vishal Kumar Son Of Late Kanhaiya Prasad Singh Resident Of Mohalla- 2/24. 7 H.F. Resident Of H.I.G. Bahadurpur, Housing Colony, P.S. Agam Kuan, District - Patna, Pin - 800026

.... .... Petitioner/s

Versus

1. The State Of Bihar Through Municipal Corporation Bihar, Patna
2. The Municipal Commissioner, Patna Nagar Nigam, Maurya Lok Complex, 2nd Floor, Block -C, Patna - 1
3. The Executive Engineer, Patna Nagar Nigam, Maurya Lok Complex, 2nd Floor, Block-C, Patna - 1
4. The Executive Officer, Kankarbagh Anchal, Patna Nagar Nigam, Near Kankarbagh Tempo Stand, Patna - 26
5. The Ward Commissioner, Ward No. 46, Panitanki, Bhootnath Road, Kankarbagh, Patna-26

.... .... Respondent/s

With

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**Civil Writ Jurisdiction Case No. 11781 of 2014**

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1. Ranjit Trivedi S/o Sri Fanish Trivedi resident of Mohalla - Priya Nagar, South of Bailey Road, P.S. Rupaspur, Danapur, District - Patna

.... .... Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Secretary, Urban Development Department, Government of Bihar, New Secretariat, Bailey Road, Patna
2. The Commissioner, Patna Municipal Corporation, Patna
3. The Chief Administrator, Patna Municipal Corporation, Maurya Lok Complex, P.S. Kotwali District Patna
4. The Deputy Administrator, Patna Municipal Corporation, Maurya Lok Complex, P.S. Kotwali District Patna
5. The Executive Officer, Patna Municipal Corporation, New Capital Circle, Patna.

.... .... Respondent/s

With

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**Civil Writ Jurisdiction Case No. 16050 of 2014**

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1. Ram Udar Singh, S/o. late Ram Sagar Singh, R/o. Vashishtha Vihar Colony, Municipal Corporation, Ward No.11, P.O. Anisabad, P.S. Phulwari Sharif, District- Patna.

.... .... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Urban Development Department, Government of Bihar, Patna
3. The District Magistrate, Patna
4. The Patna Municipal Corporation, through the Commissioner, Patna Municipal Corporation, Patna
5. The Executive Officer, New Capital Division, Patna Municipal Corporation, Patna.

.... .... Respondent/s

With

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**Civil Writ Jurisdiction Case No. 20570 of 2012**

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1. Suresh Pd. Yadav S/O Late Kishun Rai Resident Of Village- Ilaahibag, P.O- Bairia, P.S- Gopalpur, District- Patna.
2. Rakesh Kumar S/O Late Sheojee Singh Resident Of Village + P.O- Bairia, P.S- Gopalpur, District-Patna.
3. Dr. Brahmanand Prasad S/O Late Ramnandan Singh Resident Of Village + P.O- Manoharpur Kachhuara, P.S- Gopalpur, District- Patna.
4. Arun Kumar S/O Late Ramsalik Rai Resident Of Village + P.O- Manoharpur, Kachhuara, P.S- Gopalpur, District- Patna.
5. Dilip Kumar Singh S/O Late Rajdeo Singh Resident Of Village- Chak Bairia, P.O- Bairia, P.S- Gopalpur, District- Patna.

.... .... Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner, Departement Of Urban Development & Housing, Govt. Of Bihar, Patna.
3. The Principal Secretary, Department Of Urban Development & Housing, Govt. Of Bihar, Patna.
4. The Bihar State Pollution Control Board, Bihar, Patna, Represented Through Its Secretary, Pollution Control Board, B Ihar, Beltron Bhawan, Shashtri Nagar, Patna.
5. The Secretary, Bihar State Pollution Control Board, Bihar Beltron Bhawan, Shashtri Nagar, Patna.
6. The Patna Municipal Corporation, Represented Through Its Cheif Municipal Officer, Patna Municipal Corporation, Patna.
7. The Empowered Standing Committee, Patna Municipal Corporation, Patna.
8. The Mayor, Patna Municipal Corporation, Patna.

9. The Circle Officer, Sampathchak, District- Patna.
10. Mr. Nirbhay Kumar Singh, Pramukh, Panchayat Samiti- Sampatchak, Patna.
11. The Executive Officer- Cum- Block, Development Officer, Sampatchak, Patna.
12. The Mukhiya Of Panchayat Raj- Bairia Karnpura, Within The Block- Sampatchak, District- Patna.
13. The Union Of India, Represented Through The Cabinet Secretary, Ministry Of Pollution & Environment, Govt. Of India, New Delhi.
14. The Cabinet Secretary, Ministry Of Pollution & Environment, Govt. Of Bihar, New Delhi.

.... .... Respondent/s

**Appearance :**

(In all cases)

For the State- respondents: Mr. R.B. Mahto, Advocate General  
Mr. Lalit Kishore, PAAG  
Mr. D.K. Sinha, AAG-2  
Mr. Roy Shivaji Nath, AAG-3  
Mr. Shambhu Nath, AC to AAG-3  
Mr. Ranjit Kumar Pandey, Advocate  
For the Patna Municipal Corporation: Mr. Y. V. Giri, Sr. Advocate  
Mr. H.S. Himkar, Advocate.

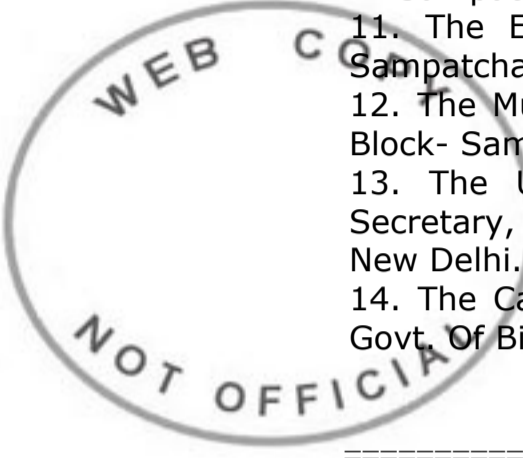
**(In CWJC No. 8152 of 2013)**

For the Petitioner/s : Mr. Suresh Prasad Singh No.1, Adv.  
Mr. Vitesh Kumar Singh, Advocate  
Mr. Sarvan Kumar, Advocate  
(In I.A. No. 9508 of 2014) Mr. Pankaj Kumar Jha, Advocate  
Mr. Santosh Kumar, Advocate  
Mr. Madhurendra Sharma, Adv.  
(In I.A. Nos. 324 and 9317 of 2014): Mr. S.B.K. Mangalam, Adv.  
(In I.A. No. 59 of 2015) Mr. Vinod Kanth, Sr. Adv.  
(In I.A. No. 108 of 2015) Mr. Prasoon Sinha, Adv.(in person)

**(In CWJC No. 9574 of 2012)**

For the Petitioner/s : Mr. Satya Ranjan Sinha, Adv.  
Mr. Sri Nath Pathak, Adv.  
Mr. Sandeep Kumar, Adv.  
(In I.A. No. 9508 of 2014)  
For the Intervenor: Mr. Praveen Kumar, Adv.  
(In I.A. No. 9508 of 2014) Dr. Kumar Amitesh Chandra, Adv.  
For the Intervenor:  
For the Patna Municipal Corporation: Mr. Prasoon Sinha, Advocate  
Mr. Manish Kumar No.2, Adv.

**(In CWJC No. 11781 of 2014)**



For the Petitioner/s : Mr. Ratan Kumar  
For the Respondent/s : Mr. Roy Shivaji Nath, AAG-3

**(In CWJC No. 16050 of 2014)**

For the Petitioner/s : Mr. Anil Kumar  
For the Respondent/s : Mr. AJAY, GA12

**(In CWJC No. 20570 of 2012)**

For the Petitioner/s : Mr. S.P. Srivastava, Advocate.  
For the Respondent/s :

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**CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI  
AND  
HONOURABLE MR. JUSTICE V.N. SINHA  
AND  
HONOURABLE MR. JUSTICE NAVANITI PRASAD  
SINGH**


CAV JUDGMENT

**(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)**

**Date: 30.01.2015.**

Compelled to do what is imperative so as to adhere to, and maintain, judicial discipline and impelled by the call of duty, I, with some degree of sadness and a deep sense of anguish, pen down my views and conclusions in the context of the facts and attending circumstances, which have led to the constitution of this Full Bench. Strictly speaking, administration of justice inheres judicial discipline. No wonder, therefore, that while administering justice, judicial discipline is needed to be adhered to.

**2.** These two Public Interest Litigations (PIL) and the Interlocutory Applications filed therein have been ordered to be listed before this Full Bench so as to arrest apparently conflicting directions



emanating from two Division Benches of this Court in relation to a singular matter, which has arisen from the State Government's Resolution No. 17184, dated 12.12.2014, placing, in exercise of its powers under Rule 3(1)(a) of All India Services (Discipline & Appeal) Rules, 1969, under suspension, Shri Kuldip Narayan, I.A.S., who had been functioning at the time of his suspension, as Commissioner, Patna Municipal Corporation, and the consequential order, contained in State Government's Resolution No. 3966, dated 15.12.2014, directing Shri Kapil Ashok Shirsit, I.A.S., Additional Municipal Commissioner, Patna Municipal Corporation, to discharge the functions of the Chief Executive Officer-cum-Municipal Commissioner of the Patna Municipal Corporation.

### **BACKGROUND FACTS**

**3.** The material facts, which led to the constitution of this Full Bench, may, in brief, be set out as under:-

**(i)** On 01.11.2012, a PIL was filed by Suresh Prasad Yadav and others, being C.W.J.C. No. 20570 of 2012 (referred to, for convenience, as '**first PIL**'), bringing to the notice of this Court the grievances of the people, in general, and residents of

village Sampatchak, Bairiya, P.S. Gopalpur, District Patna, in particular, with regard to dumping of solid municipal waste causing environmental pollution and health hazard. As the same was being allegedly done at the behest of the Patna Municipal Corporation, the Patna Municipal Corporation was made one of the party-respondents through the Chief Executive Officer-cum-Municipal Commissioner. Some of the orders passed in these proceedings, insofar as they are relevant, are quoted hereunder:-

*"17.05.2013- A counter affidavit is filed today on behalf of the Patna Municipal Corporation affirmed by Sri Kuldip Narayan, Municipal Commissioner. We have gone through the same.*

*The Corporation does not appear to be realizing the gravity of the situation giving the seriousness the matter deserves. Time is running out. Further delay would in our opinion create an irretrievable and grossly hazardous situation. The Corporation acknowledges possession of the lands having been given to it. Surprisingly it then questions its own acts with regard to construction raised and objections*

*by such occupants. The counter affidavit reflects muddled thinking and is completely lacking in clarity of vision, thought and action.*

*We were inclined to issue certain directions to the Corporation today, but refrain from doing so at the request of the Principal Additional Advocate General. It is submitted that a proper counter affidavit shall be filed with regard to necessary steps to be taken for solid waste management in the form of a time schedule to be strictly adhered to.*

*We are also informed that the matter had engaged the attention of the court earlier also in another application, we request the Principal Additional Advocate General to bring any such earlier orders on record also.*

*Put up on 20.06.2013 at 2:15 p.m.*

*Sd/- Navin Sinha, J.*

*Sd/- Shivaji Pandey, J "*

"21.08.2013-

xxx	xxx
xxx	xxx
xxx	xxx
xxx	xxx
xxx	xxx

xxx xxx

5. From the facts narrated above, it is quite evident that the statutory authorities established by the State Government under Patna Municipal Corporation Act or the Union of India under Pollution Control Act have failed to discharge their legal duty within a reasonable time. In the instant case, land acquisition proceeding having been completed on 29.09.2008 it is high time that the authorities ought to have established such plant. Authorities having failed to establish incinerator plant because of inaction on their part, which is likely to cause serious situation in the city, we call upon the Chief Secretary, Government of Bihar to interact with the Urban, Revenue Secretary, Government of Bihar and the Secretary, Ministry of Forest and Environment, Government of India to ensure that the necessary clearance from the Ministry of Forest and Environment, Government of India as also the Board is issued within two weeks from today.

xxx xxx  
xxx xxx  
xxx xxx

Sd/- V. N. Sinha, J.



Sd/- Rajendra Kumar  
Mishra, J."

"24.09.2014

xxx                      xxx  
xxx  
xxx                      xxx  
xxx

*In view of the fact that no satisfactory answer has been given on behalf of respondent Nos. 6, 7 and 8 to the queries made by us, we hereby, in the interest of justice, direct respondent No.6 to appear, in person, in this Court, at 10.30 AM, along with all relevant records, tomorrow, i.e. on 25.09.2014, so that necessary effective order can be passed.*

Sd/-I. A. Ansari,  
J.

Sd/- Anjana  
Mishra, J."

"25.09.2014-

*Heard learned counsel appearing for the parties.*

*Mr. Kuldip Narayan, Commissioner, Patna Municipal Corporation is present.*

*In response to the queries, which have been made by us, what transpires is that the allotment of work, in question, to a private party requires approval of the Cabinet and this subject had*

*not been included in any of the agenda of the Cabinet so far. There appears to be not only serious lapses on the part of the Chief Secretary and the other officials of the State Government, but this Court appears to have been, intentionally and deliberately, misled to pass various orders, when the respondents knew very well that the allotment of work to any private party would require approval of the Cabinet. However, we do not express any definite opinion, at this stage, on the manner in which the respondents have conducted themselves in the proceedings of this P.I.L.*

*On the request made on behalf of respondent No.5, we direct that the P.I.L. be listed, for order, on 14th October, 2014.*

*Considering the matter in entirety and in the interest of justice, personal appearance of Mr. Kuldip Narayan, Commissioner, Patna Municipal Corporation, is hereby dispensed with until further orders.*

Sd/-I.A. Ansari, J.

Sd/- Anjana Mishra, J.”

**(ii)** In course of time, when the **first**

**PIL** was, again, taken up on 15.12.2014, it was brought to the notice of the Division Bench that the State Government had taken steps for suspending the Municipal Commissioner, Patna Municipal Corporation and show cause notices had already been issued in this regard. It was also brought to the notice of the Division Bench that Shri Kuldip Narayan, who was the Municipal Commissioner -cum- Chief Executive Officer, Patna Municipal Corporation, and representing the Patna Municipal Corporation in the **first PIL**, had been suspended by the State Government by order, dated 12.12.2014, and in his place, Shri Kapil Ashok, the senior most officer serving the Patna Municipal Corporation, had been directed by the Government, vide order, dated 15.12.2014, to function as the Municipal Commissioner -cum- Chief Executive Officer, Patna Municipal Corporation.

**(iii)** In the light of the submissions so made, the Division Bench observed thus,

"15.12.2014-  
xxx            xxx  
xxx  
xxx            xxx  
xxx

*It has, now, been brought to the notice of this Court that the State Government has taken steps for superseding Patna*

*Municipal Corporation and show cause notices have already been issued in this regard. We do not feel inclined to make any further comments on this aspect.*

xxx                      xxx  
xxx  
xxx                      xxx  
xxx

*As far as suspension of the former Municipal Commissioner, namely, Mr. Kuldip Narayan, is concerned, **we refrain from making any comments on his suspension; obviously, because as far as his suspension is concerned, the same cannot be made subject matter of a PIL and he may challenge his suspension order, if he is so advised, by appropriate writ petition. For the present, therefore, and until the time a permanent arrangement is made by the State Government by withdrawing suspension of Mr. Kuldip Narayan, functions of the Corporation, as the submissions made on behalf of the State Govt. and the Corporation indicate, have to be managed by Mr. Kapil Ashok.***



*Sd/-I.A. Ansari, A.C.J.*

*Sd/- Samrendra Pratap Singh, J.”*

(Emphasis is supplied)

**(iv)** The import of the said order, dated 15.12.2014, passed by the Division Bench, in the **first PIL**, was clear. The matter, in relation to suspension of Shri Kuldip Narayan, was not to be made a subject of a PIL, making it abundantly clear that Shri Kuldip Narayan could challenge the same in appropriate writ proceedings. Secondly, till the Government withdrew the said order of suspension, the Patna Municipal Corporation would be managed by Shri Kapil Ashok.

**(v)** It may be pointed out that what was specifically noted in the order, dated 15.12.2014, passed in the **first PIL**, is that Shri Kapil Ashok was given time by the Court to acquaint himself with the affairs of the Patna Municipal Corporation and the matter was adjourned to 19.12.2014. It may be noted here that this order was passed in presence of the counsel for the writ petitioners, State, the Patna Municipal Corporation and the Commissioner, Patna Municipal Corporation, none of whom have chosen to doubt or challenge this order. In fact, the order, dated

15.12.2014, aforementioned has never been challenged.

**(vi)** It may, now, be borne in mind that on 16.04.2013, another writ petition was filed by one Narendra Mishra, which gave rise to a PIL, bearing C.W.J.C. No. 8152 of 2013, wherein the petitioner's grievance was in relation to a particular multi-storied building being constructed in violation of the Building Bye-laws within the territorial area of the Patna Municipal Corporation and, in spite of complaint alleged to have been made in this regard, nothing was being done by the Patna Municipal Corporation. The Division Bench, dealing with the latter PIL, which we would refer to as '**second PIL**', expanded the scope of the writ petition to cover all multi-storied constructions being done within the territorial jurisdiction of the Patna Municipal Corporation and, on 08.07.2013, passed the following order :-

*"08-07-2013- This matter has been listed at our instance today as during finalization of the order dated 02.07.2013 we felt the need for an additional direction with regard to the office of the Municipal Commissioner, Patna.*

*Heard Counsel for the parties. We also take note of*

*the observations made in the case of Arun Kumar Mukherjee (supra) that frequent transfers of the then Vice Chairman, Patna Regional Development Authority, had hindered enforcement of buildings laws. We therefore, direct that the present Municipal Commissioner, Sri Kuldip Narain, IAS, shall not be transferred without the permission of the Court, both for the purpose of continuity and answerability.*

*Sd/- Navin Sinha, J.*

*Sd/- Vikash Jain, J.”*

**(vii)** It may be noted that without moving this Court for either vacating the directions given by the order, dated 08.07.2013, or modifying the same or for allowing Shri Kuldip Narayan to be withdrawn and replaced by some other Officer, the State approached the Supreme Court against the said order, dated 08.07.2013, passed in the **second PIL**. The Supreme Court declined to interfere and directed the State, if so advised, to move the Division Bench of this Court and if aggrieved by that order, giving liberty to the State to approach the Supreme Court.

**(viii)** On 08.12.2014, in the **second**

**PIL**, an interlocutory application, bearing I. A. No. 9094 of 2014, was filed by one Amitesh Kumar, son of Shri Lalan Prasad Singh, for intervention seeking interim direction alleging, *inter alia*, that the father of Amitesh Kumar, namely, Shri Lalan Prasad Singh, an Executive Engineer of Kankarbagh Division of the Patna Municipal Corporation, was being proceeded against by Vigilance Department of the State and, in this connection, a vigilance raid was conducted on 02.12.2014 and pursuant thereto, a First Information Report was lodged giving rise to Vigilance Case No. 94 of 2014.

(ix) On 09.12.2014, the Division Bench, dealing with the **second PIL**, took up I. A. No. 9094 of 2014 also and passed orders. The relevant part of the order passed therein is quoted hereunder:

“09.12.2014.

xxx            xxx  
xxx  
xxx            xxx  
xxx

***I.A.No.9094 of 2014***

*Having considered the averments made in I. A. No. 9094 of 2014, we have asked Shri Rama Kant Sharma, learned Senior Counsel, to seek instruction in the matter. Put up this matter on 19th*

*December, 2014. **Meanwhile, no coercive step shall be taken against Shri Lalan Prasad Singh, Executive Engineer, Patna Municipal Corporation but he should appear before the authority of the vigilance and submit his show cause.***

*This order is being passed in connection with Vigilance Case No. 94 of 2014.*


Sd/- V. N. Sinha, J.

Sd/- Prabhat Kumar Jha, J.”  
(Emphasis is added)

**(x)** By order, dated 09.12.2014, the second Division Bench, in the **second PIL**, thus, directed that no coercive steps be taken, in the vigilance case, against Sri Lalan Prasad Singh, even though Sri Lalan Prasad Singh was not even a party to any of the proceedings in the **second PIL** nor could he claim the protection of the order, dated 08.07.2013, passed, in the **second PIL**, whereby transfer of Sri Kuldip Narayan, Municipal Commissioner, without leave of the Court, had been ordered. The effect of the directions, given, in the **second PIL**, in favour of Sri Lalan Prasad Singh, was that he could neither be arrested nor could any search or seizure be carried out

against him. Let it be noted here that there is no further order whatsoever on the records of the **second PIL** between 09.12.2014 and 15.12.2014.

**(xi)** As noted above in the **first PIL**, in the *pre-lunch session* of the Court, on 15.12.2014, a Division Bench had passed order, in relation to the suspension of Shri Kuldip Narayan, clearly noticing that his suspension cannot be made subject matter of a public interest litigation and he could pursue his remedy in an independent writ proceeding, if so advised, *and until the time a permanent arrangement is made by the State Government by withdrawing suspension of Shri Kuldip Narayan, functions of the Patna Municipal Corporation, as the submissions made on behalf of the State Government and the Patna Municipal Corporation indicate, have to be managed by Shri Kapil Ashok*; but on the same day, i.e., on 15.12.2014, an interlocutory application, bearing I. A. No. 9327 of 2014, was filed, in the **second PIL**, by Shri Kuldip Narayan himself, bringing to the notice of the Court the order of his suspension passed by the State Government and praying for its stay and quashment. This was, immediately, moved before the Division Bench, dealing with the **second PIL**, in the



*post lunch session*, even though the order passed, in the **first PIL** by another Division Bench, in the *pre lunch session*, was known to all including Sri Kuldip Narayan and his learned counsel. When the matter was taken up in the *post lunch session* by the second Division Bench on 15.12.2014, the second Division Bench, having been informed, on behalf of the State, of the order passed on the same day by the first Division Bench and having noted the information so received, stayed the resolution of the State Government suspending Shri Kuldip Narayan by adjudicating upon the merits of the suspension and, then, on the next day, i.e., 16.12.2014, ordered interim stay of suspension to continue till final orders were passed in the **second PIL** regarding suspension of Shri Kuldip Narayan, on the basis of I. A. No. 9327 of 2014, filed by Shri Kuldip Narayan, seeking stay of his suspension and quashing thereof. For the purpose of clarity, the relevant portion of the order, made in the **second PIL**, in the *post lunch session* on 15.12.2014, is reproduced below:

*"The Municipal  
Commissioner, Patna has filed I.A.  
No. 9327 of 2014 assailing the  
resolution of the Government  
dated 12.12.2014, whereunder he*


has been placed under suspension.

2. Mr. Lalit Kishore, Principal Additional Advocate General, however, submitted that the resolution suspending the Municipal Commissioner, Patna was placed before a co-ordinate Bench of this Court today itself while the Bench was considering another Public Interest Litigation relating to Waste Management Scheme (raising of incinerator plant) and the Court observed that in a Public Interest Litigation suspension order of an officer cannot be assailed/questioned. In this connection, **we may observe that we are cognizant of the legal position that even if transfer of a Government servant is stayed by the Court (in the instant case of the Municipal Commissioner, Patna) the officer can be placed under suspension by the disciplinary authority. In the instant case aforesaid legal position, however, is not applicable as in the background of the present case,** we are of the view that this Court under order dated 02.07.2013 passed in the present case giving details of hundreds of



*illegal construction within the municipal limits of Patna directed the Municipal Commissioner to initiate vigilance cases against those who had raised illegal constructions violating the bye-laws within a reasonable time. Subsequently under orders dated 08.07.2013, the Division Bench taking note of the earlier direction of this Court in the case of Arun Kumar Mukherjee (supra) that frequent transfers of the then vice-chairman of the Patna Regional Development Authority has hindered enforcement of building bye-laws directed that the present Municipal Commissioner, Patna shall not be transferred without permission of the Court for ensuring continuity and answerability. Against the aforesaid order dated 08.07.2013 State Government approached the Supreme Court in Special Leave to Appeal which was disposed of under order dated 25.11.2013 passed in Special Leave to Appeal (Civil) No. 36936 of 2013, observed that State Government before intending to transfer the Municipal Commissioner, Patna would seek permission from the*





*High Court. It further appears that till date State Government has not sought any permission to transfer the Municipal Commissioner on the ground of inaction on his part and has straightaway passed resolution dated 12.12.2014 putting him under suspension on the ground of his inaction for non-installation of incinerator plant under Solid Waste Management Scheme and for removal of illegal encroachment as also for not stopping illegal construction in the year 2012-13, 2013-14, whereas from the facts it is evident that the encroachment as well as illegal constructions were made much earlier to the posting of Municipal Commissioner, Patna on the present post of Municipal Commissioner as would appear from the report of the Additional Municipal Commissioner Mr. Kapil Ashok as well as from the different orders passed in this case as also in the case of Arun Kumar Mukherjee.*

3. Let the file in which proposal to place the Municipal Commissioner was considered by


*the Government be produced before us tomorrow at 02:15 P.M., when we shall finally hear the prayer made in the aforesaid Interlocutory Application, but until then operation of the resolution is stayed.*

*4. Put up tomorrow at 02:15 P.M. under the same heading."*

(Emphasis is supplied)

**(xii)** What is impossible to ignore is the fact that on 15.12.2014 itself, in the **second PIL**, State had filed two interlocutory applications, being I.A. No. 9357 of 2014 and I.A. No. 9359 of 2014, seeking leave of the Division Bench to post another officer in place of Shri Kuldip Narayan, who had been suspended, so that functions of the Patna Municipal Corporation might continue. The Division Bench, in the **second PIL**, made, however, no order on the State's two interlocutory applications aforementioned, namely, I.A. No. 9357 of 2014 and I.A. No. 9359 of 2014. Not even notices were ordered to be issued on these two interlocutory applications of the State.

**(xiii)** The State being in a predicament, where first Division Bench had passed an order clearly holding that the suspension of Shri Kuldip



Narayan would not be a subject matter of a PIL and if so advised, he could move a separate writ petition and further directing, "... .. *until the time a permanent arrangement is made by the State Government by withdrawing suspension of Shri Kuldip Narayan, functions of the Patna Municipal Corporation, as the submissions made on behalf of the State Government and the Patna Municipal Corporation indicate, have to be managed by Shri Kapil Ashok*", the later order of the Division Bench, in the **second PIL**, stayed the order of suspension of Shri Kuldip Narayan, in a public interest litigation, making him continue as Incharge of the Patna Municipal Corporation, the matter was brought to the notice of the first Division Bench, which had been dealing with the **first PIL**. This Division Bench happened to be presided over *incidentally* by me as the Acting Chief Justice.

**(xiv)** Noticing apparently conflicting orders in relation to the same matter of suspension of Shri Kuldip Narayan and interference therewith in a *public interest litigation*, the first Division Bench passed an order, on 17.12.2014, in the **first PIL**, directing both the cases to be placed before the Acting Chief Justice, on the administrative side, to consider if

the both cases (i.e., the **first PIL** as well as the **second PIL**) be referred to a larger Bench so as to arrest the conflicting orders with regard to the very maintainability of a service dispute in a public interest litigation and the dichotomy created on account of two conflicting observations made and directions passed by two different Division Benches. The order, dated 17.12.2014, so passed in the **first PIL**, by the first Division Bench, read as under,

"17.12.2014. Mr. Lalit Kishore, learned Principal Additional Advocate General, has brought to the notice of this Court that in the order passed, on 15.12.2014, in CWJC No. 20570 of 2012, and the order, passed, on 15.12.2014, in I.A. No. 9327 of 2014, arising out of CWJC No. 8152 of 2013, **two different Benches have made observations, taking views and passing directions contradictory to each other, and the State, placed in such a situation, is unable to effectively deal with the administration and such conflicting observations, directions and orders, emanating from two Benches of**

***this Court, would impair administration of justice and underline the majesty of the rule of law. It is also brought to the notice of this Court that if the Bench, which has been in seisin of I.A. No. 9327 of 2014, was of the opinion that it was required to take a view different from what had been expressed in the order, dated 15.12.2014, in CWJC No. 20570 of 2012 and the directions passed therein allowing Mr. Kapil Ashok to appear, on behalf of Patna Municipal Corporation, in CWJC No. 20570 of 2012, as the In-Charge, Municipal Commissioner, it would have been appropriate to refer the matter to a larger Bench for necessary decision.***

*We find substance in the submissions made by the learned Principal Additional Advocate General, more particularly, when we notice that by the order, dated 15.12.2014, passed in I.A. No. 9327 of 2014, while setting at naught the observations made and the directions given in order, dated 15.12.2014, in CWJC No. 20570 of 2012, the learned Bench has not*

*expressed any view if the impugned order of suspension, which was the subject matter of I.A. No. 9327 of 2014, can be legally set aside and quashed in a Public Interest Litigation.*

*Considering, therefore, the matter in its entirety and in the interest of justice, we are of the view that **a larger Bench needs to be constituted for the purpose of dealing with both the writ petitions, namely, CWJC No. 20570 of 2012, and also the I.A. No. 9327 of 2014, arising out of CWJC No. 8152 of 2013, so as to arrest conflicting directions emanating from two different Benches.***

*Registry is, therefore, directed to place the matter, on the administrative side, before Hon'ble the Chief Justice (Acting) for consideration if a larger Bench needs to be constituted.*

*Sd/- I.A. Ansari, ACJ*

*Sd/- Samarendra Pratap Singh, J."*

*(Emphasis is supplied)*


**(xv)** The Acting Chief Justice accordingly passed administrative order that both the

cases be, immediately, listed before a larger Bench i.e. Full Bench, and the three senior most Judges of the Court i.e. the Acting Chief Justice, Justice V. N. Sinha and Justice Navaniti Prasad Singh would constitute the Full Bench to hear the two public interest litigations. It is in this perspective that this batch of PILs, with all interlocutory applications filed therein, have been listed and taken up for consideration by the Full Bench.

**SUBMISSIONS**


**4.** As vehement lengthy arguments have been advanced before this Full Bench with regard to the legality of the constitution of this Full Bench, while referring the **two PILs** to a Full Bench and other matters impinging upon the constitution of the Full Bench, I deem it proper to deal with them as well.

**5.** The first thing, I would like to note, is that no counsel, appearing for any of the parties in any of these proceedings before the Full Bench, has chosen to doubt or challenge the correctness of order, dated 15.12.2014, passed in the **first PIL**, i.e., C.W.J.C. No. 20570 of 2012, wherein the first Division Bench had held that Shri Kuldip Narayan could challenge his suspension in a separate writ petition,



but not in a **PIL** nor has anyone doubted the impartiality of the first Division Bench, in the **first PIL**, allowing Shri Kuldip Narayan a leeway. Without challenging the correctness, legality or otherwise of the order passed, in the **first PIL**, in the *pre-lunch* session, on 15.12.2014, Shri Kuldip Narayan, however, filed, on 18.12.2014, I.A. No. 9498 of 2014 questioning the cases being referred to the Full Bench.

**6.** Assailing the very legality in the constitution of this Full Bench, Mr. Y. V. Giri, learned Senior Counsel, appearing on behalf of the Municipal Commissioner -cum- Chief Executive Officer of the Patna Municipal Corporation, Shri Kuldip Narayan, and also the Patna Municipal Corporation, submits that listing of all the cases together before the Full Bench of three Judges by the orders of the Acting Chief Justice was not permissible under the Patna High Court Rules, especially, when, according to him, there were no conflicting order or orders in ignorance of binding precedent. Mr. Giri, learned Senior Counsel, also submits that though Shri Kuldip Narayan was an officer of the State Government in the cadre of All India Service (I.A.S.), he having been appointed as the Municipal Commissioner, Patna Municipal



Corporation, the State Government was incompetent to take any disciplinary action against him under the All India Services (Discipline & Appeal) Rules, 1969, and it had no jurisdiction to either start disciplinary proceedings or to suspend him, especially, in respect of nothing done or alleged to have been done by him as a Municipal Commissioner under the provisions of the Bihar Municipal Act, 2007. His further submission is that notwithstanding clear order, dated 15.12.2014, passed in the **first PIL**, specifically pointing out that the order of suspension could not be made subject matter of **PIL** and notwithstanding that the second Division Bench, being cognizant of the said order, having entertained the interlocutory application being I. A. No. 9327 of 2014 as filed by Shri Kuldip Narayan in the **second PIL**, and notwithstanding the stay granted by the second Division Bench as against the order of suspension and thereby allowing Shri Kuldip Narayan to continue as Commissioner, Patna Municipal Corporation, there was no conflict and the second Division Bench ought to have been permitted to proceed and adjudicate upon the merits of the suspension order in the **second PIL** and any party, aggrieved by the final order, could seek his remedy

accordingly, but referring all the cases to the Full Bench, at such a stage, was not permissible.

**7.** Let it be noted that with the best traditions maintained at the Bar, Mr. Giri, learned Senior Counsel, appearing on behalf of Shri Kuldip Narayan, has not, however, raised any plea, attributed or even faintly suggested, of likelihood of *bias* against any member constituting this Full Bench. Why I made this observation would become clear and evident as we proceed further.

**8.** Amazing though it may sound, Mr. Shree Prakash Srivastava, learned counsel appearing for the petitioners, in the **first PIL**, has also assailed the legality of the constitution of this Bench. His arguments are, however, a little different. His contention is that the **first PIL** had been directed to be listed on 19.12.2014, whereas the matter, on being mentioned by the learned Principal Additional Advocate General, in the *pre lunch session* of 17.12.2014, was taken up without publication of any notice. I may, immediately, point out that the matter was taken up, on 17.12.2014, on publication of notice. This apart, adverse order ought to have been passed, and had not been passed, against the interest of the

petitioners in the **first PIL**, while referring the **two PILs**, on the administrative side, to the Acting Chief Justice, for consideration, if a larger Bench needed to be constituted to arrest conflicting orders and directions emanating from the two Division Benches of this Court.

**9.** The other grievance of Mr. Shree Prakash Srivastava, learned counsel, is that the subject matter of the **second PIL** has been imported into the **first PIL**. I find no substance in this submission inasmuch as the **two PILs** are on two different subjects and it was only because of the fact that the Commissioner, Patna Municipal Corporation, stood suspended, that different and colliding directions, may be unintentionally, emanated from two Division Benches of this Court, which was wholly unhealthy, may be, unconsciously and unless conflicting observations and directions were restricted, such conflicts would negate the concept of judicial discipline and deny to the people proper and effective administration of justice.

**10.** I may further point out that Mr. Shree Prakash Srivastava, learned counsel, was repeatedly asked by us to point out how he or, for that


matter, his writ petition or his writ petitioners were at all adversely affected by placing the matter before the Full Bench, he had no clear reply. Why he was opposing the hearing before the Full Bench, he could not clearly specify. I am surprised and dismayed.

**11.** We, then, have Mr. Jyoti Ranjan Jha, Advocate, appearing for Shri Amitesh Kumar, in I.A. No. 9094 of 2014, filed in the **first PIL**, adopting the same line of arguments as Mr. Giri; but in course of his argument, he, however, urged the Court that his submissions should be taken note of as an independent Advocate in the matter. To me, the reasons were obvious. I have earlier indicated the contents of this I.A. No. 9094 of 2014 as filed in the **second PIL**, wherein Shri Amitesh Kumar had sought to protect the interest of his father, Shri Lalan Prasad Singh, Executive Engineer in the Kankarbagh Division of the Patna Municipal Corporation, in respect of the vigilance case filed and registered against him, wherein the second Division Bench, in the **second PIL**, ordered, on 09.12.2014, that no coercive steps be taken, in the vigilance case against Sri Lalan Prasad Singh, even though he was not a party to any of the proceedings in the public interest litigation nor

could he even remotely claim the protection of the order, dated 08.07.2013, passed, in the **second PIL**, wherein an order of restraint was passed only in respect of transfer of Sri Kuldip Narayan, Municipal Commissioner, without leave of the Court. The effect of the directions, given in favour of Sri Lalan Prasad Singh, was that neither could he be arrested nor was any search or seizure possible.

**12.** It may also be noted here that on 15.12.2014 itself, in the **second PIL**, State had filed two interlocutory applications, being I.A. No. 9357 of 2014 and I.A. No. 9359 of 2014, seeking leave of the Division Bench to post another officer in place of Shri Kuldip Narayan, who had been suspended, so that functions of the Patna Municipal Corporation might continue.

**13.** Before proceeding further, I may refer to I.A.No. 108 of 2015 filed, in C.W.J.C.No. 8152 of 2013, by Mr. Prasoon Sinha, an Advocate, strictly in his individual capacity. It has not been filed on behalf of any of the parties to the writ petition, much less on behalf of Shri Kuldip Narayan or on his instructions. By this application, Mr. Prasoon Sinha has sought Justice Navaniti Prasad Singh to recluse from




being a Member of the Full Bench and hearing this matter on the ground of likelihood of *bias* against Shri Kuldip Narayan. With this interlocutory application, I will deal with elaborately at a later stage. I may, however, hasten to add that Shri Kuldip Narayan has raised no such apprehensions nor has any such apprehensions been expressed by any of the parties to the proceedings.

**14.** I may also note here that Mr. Kumar Amitesh Chandra, Advocate, who apparently appears for some of the connected matters, raised serious objections to the stand of Mr. Prason Sinha, Advocate, who appeared not as a party, but independently by means of I. A. No. 108 of 2015, seeking one of the members of the Full Bench to rescue on the ground of likelihood of *bias*. Mr. Kumar Amitesh Chandra, learned counsel, placed on record some orders of different Courts in different proceedings, wherein different Benches, including that of Justice V. N. Sinha, have passed severe strictures against Shri Kuldip Narayan. This questions the *bona fide* of Mr. Prason Sinha, Advocate, in choosing to ignore these orders and strictures passed, while raising the plea of likelihood of *bias* against one of the

members of this Full Bench.


**15.** With some degree of appreciation, I must hasten to point out that no *bias* or *prejudice* has been alleged by any of the parties to the two *Public Interest Litigations* against any of the Judges, constituting either the first Division Bench or the second Division Bench, nor has any of the parties to the two *public interest litigations* or interlocutory applications filed therein have expressed any doubt on the impartiality of the members of this Full Bench, which was encouraging and gave us the impetus to do what was warranted of us by the law of this great land.

**16.** Mr. Santosh Kumar, learned Counsel, appearing on behalf of some of the Municipal Councillors through I.A. No. 9508 of 2014, filed in C.W.J.C. No. 8152 of 2013, sought for their impleadment in opposition to the actions of the State Government in issuing orders of suspension of Shri Kuldip Narayan. Placing reliance on recent judgment of the Supreme Court in the case of **State of Punjab v. Salil Sabholok and others**, reported in **(2013) 5 SCC 1**, he has submitted that the service matters can be agitated in a PIL.



**17.** Mr. Sanjay Singh, learned counsel, appearing on behalf of Builders Association, who, at different stages had filed various interlocutory applications in the **second PIL**, urges the Court to take note of the fact that unnecessarily, the Builders Association and its members are being dragged into the present controversy, though they have no personal animus against Shri Kuldip Narayan and except for raising a boggy against the Builders Association, no fact or any act of Builders Association has at all been pleaded by any party to show "*any unholy nexus between the State and Builders Association*". Mr. Singh pleads that this fact may be borne in mind by the Full Bench, while deciding the matter.

**18.** Mr. S. B. K. Manglam, learned counsel, appearing for the Mayor of the Municipal Corporation, vide I.A. No. 9317 of 2014, tried to intervene, once again, in support of the impugned actions taken by the State Government. I may only note, in this regard, that this interlocutory application was rejected by order, dated 15.12.2014, by the Division Bench in the **second PIL** and does not survive for consideration.



**19.** Mr. Lalit Kishore, learned Principal Additional Advocate General, who appeared on behalf of the State, in all the cases, submits, firstly, that in a **PIL**, exclusively relating to failure of Patna Municipal Corporation to discharge its statutory obligations, any individual grievance of an officer, in relation to *service matter*, at his own behest, could not have been entertained and the interlocutory application (I.A. No. 9327 of 2014), filed by Shri Kuldip Narayan, in the **second PIL**, was, thus, not maintainable as being misconceived and it needed to be dismissed.

**20.** With regard to the above, learned Principal Additional Advocate General further submits that the second Division Bench, in view of the order of the first Division Bench, was required to decline to entertain the said interlocutory application and if the second Division Bench differed, for any reason, with the views of the first Division Bench or with the directions passed in the **first PIL**, the only option for the second Division Bench was to refer the matter to the Chief Justice to constitute a larger Bench to consider or adjudicate the issue. He, then, submits that the Chief Justice (in the present case, the Acting Chief Justice), being the master of rolls, had, in the

light of the provisions of the Patna High Court Rules, full authority in assigning of cases and constitution of Benches and, indeed, the Chief Justice had the duty and the jurisdiction to direct the placement of all the cases before a Full Bench.

**21.** Lest I fail in my duty to record the submission made by Mr. Ram Balak Mahto, learned Advocate General, I may point out that the learned Advocate General submits that I. A. No. 108 of 2015, in the **second PIL**, filed, in course of hearing before the Full Bench, by Mr. Prason Sinha, an Advocate, in his personal capacity, not on behalf of or not on instructions of a party to the cases, seeking one of the members of the Full Bench to recuse from the proceedings on the ground of likelihood of *bias* against Shri Kuldip Narayan is nothing, but a mischievous effort to scandalize the Court and depicts irresponsible conduct of an officer of the Court, not compatible to the status of an Advocate of the Court and, as such, the interlocutory application, filed by Mr. Prason Sinha, may please not be taken *cognizance* of and may be summarily dismissed so that the Full Bench may, without any hindrance, proceed to do what law warrants it to do.

**CONFLICT IN PERCEPTION OF LAW AND IN  
ISSUANCE OF DIRECTIONS**

**22.** In my view, there was apparent conflict between the clear view taken by the first Division Bench, in the **first PIL**, presided over by me inasmuch as it was indicated, in no uncertain words, in the order, dated 15.12.2014, passed in the *pre lunch session* that an order placing a Government servant under suspension, cannot be made a subject of a *public interest litigation* and observing that '*until the time a permanent arrangement is made by the State Government by withdrawing suspension of Shri Kuldip Narayan, functions of the Corporation, as the submissions made on behalf of the State Govt. and the Corporation indicate, have to be managed by Shri Kapil Ashok*'.


**23.** Notwithstanding the said order, dated 15.12.2014, which was known to all concerned, including the learned counsel for Shri Kuldip Narayan, who appeared in the **second PIL**, a prayer was made before the second Division Bench, in the **second PIL**, by Sri Kuldip Narayan to quash and stay his order of suspension and notwithstanding the fact that all these aspects of the matter were also made known to the

second Division Bench, in the **second PIL**, the second Division Bench, however, not only entertained the interlocutory application filed by the suspended officer, Shri Kuldip Narayan, but, immediately, stayed the order of suspension in the *public interest litigation* itself.

**MODE TO RESOLVE CONFLICT, WHEN TWO CO-ORDINATE BENCHES DIFFER WITH EACH OTHER OR ONE DIVISION BENCH IS REQUIRED TO TAKE A VIEW DIFFERENT FROM THE OTHER CO-ORDINATE BENCH**

**24.** Situated thus, we are constrained to deal with the position of law, to the extent the same is relevant in the present scenario inasmuch as this Full Bench, while resolving the conflict, has to lay down the correct position of law, governing the subject, and resolve the conflict so that the High Court speaks in one clear and unhesitant words in order to let the public, in general, and litigants and the counsels, in particular, know as to what the law on the subject is and what shall be the correct course to be charted by this very Full Bench, so as to ensure maintenance of judicial discipline and attain the goal and the object of effective administration of justice.

**25.** It is not only the question as to whether the views, expressed by the first Division



Bench, dealing with the **first PIL**, in the *pre lunch* session of 15.12.2014, were legally correct or not, the question is whether the second Division Bench, dealing with the **second PIL**, acted, consistent with the best traditions of judicial discipline, in making apparently conflicting directions and setting at naught the observations of the first Division Bench, made in the **first PIL** in the *pre lunch session* on 15.12.2014 and the directions passed therein that until the time a permanent arrangement is made by the State Government by withdrawing suspension of Shri Kuldip Narayan, functions of the Patna Municipal Corporation, as the submissions made on behalf of the State Government and the Patna Municipal Corporation indicate, have to be managed by Shri Kapil Ashok.

**26.** With great respect and with all humility at my command, I am constrained to observe that the law and the judicial propriety demanded that if the second Division Bench did not agree with the order passed earlier by the first Division Bench in relation to the same matter and wanted to take a different view, then, the matter ought to have been referred by the second Division Bench to a larger Bench and as that was not done, I, being the Acting

Chief Justice, and the facts having been brought to my notice, directed both the cases, as a whole, to be taken up by Full Bench to arrest the said conflicts.

**SERVICE DISPUTE VIS-À-VIS PUBLIC INTEREST LITIGATION**

27. I should, now, consider the argument of Mr. Santosh Kumar, Advocate, appearing for some of the Municipal Councilors, who are opposing the actions of the State Government in suspending the Municipal Commissioner and challenging the order of suspension in the PIL. Firstly, no intervention to support a petitioner is permissible under the Patna High Court Rules inasmuch as proviso to Rule 5 of Chapter XXIC of the Patna High Court Rules makes it clear that intervention or intervenors can only oppose or be heard in opposition. Thus, the application of the Councilors of the Patna Municipal Corporation, impugning the order of suspension of Shri Kuldip Narayan, is wholly misconceived in law and cannot be sustained and, therefore, rejected. Since, Mr. Santosh Kumar has relied upon a decision of the Supreme Court in the case of **State of Punjab v. Salil Sabhlok and others**, reported in **(2013) 5 SCC 1**, to submit that even in PIL, service matter can be

entertained, I may point out that I have examined the decision in **Salil Sabhlok** (supra), and in my view, reliance is wholly misconceived.

**28.** Apart from other decisions as referred to earlier on this aspect, I may refer to the recent judgment of the Supreme Court, in the case of **Hari Bansh Lal v. Sahodar Prasad Mahto and others**, reported in **(2010) 10 SCC 655**, wherein the Supreme Court has clearly held, at paragraph 15 of the reports, as follows :-

*"15. The above principles make it clear that except for a writ of **quo warranto**, public interest litigation is not maintainable in service matters."*

**29.** A writ of *quo warranto* is a writ based upon challenge of a right of a person to hold public office and is maintainable by any one at large. That is different from a PIL as generally understood. Keeping this in mind, if we see the decision in the case of **Salil Sabhlok** (supra), the Apex Court therein had clearly held that what was in challenge was not an appointment of a person holding a civil post. In other words, what was challenged by way of PIL was not a service matter, but what was challenged was selection of a person holding a constitutional post of the


Chairman of the Public Service Commission. It was clearly a case of *quo warranto* and not a case of PIL *simplicitor* in a service matter. I am constrained to observe that the decision in **Salil Sabhlok** (supra), relied upon by Mr. Santosh Kumar, is not an authority for the proposition he has sought to canvas.

**30.** To me, the law, in relation to **PIL**, is clear. A **PIL** is not to be an adversarial litigation; but inquisitorial in character. **PIL** is meant to deal with larger public interest litigation at the behest of public spirited person(s) espousing cause(s) of people, who are voiceless and who may not be in a position to move Courts to vindicate their rights. It is a litigation claiming no personal right and claiming no personal relief. The moment an individual claims to enforce a personal right and claims a personal relief, it ceases to be a subject matter of **PIL** and is not maintainable as such; more particularly, if the subject matter relates to service dispute. Enforcement of personal right and asking for a personal relief are clearly beyond the object with which **PIL** was conceived. Individuals have well defined forums for vindicating their individual rights and **PIL** is not for the said purpose nor can individual disputes be brought for adjudication in a

**PIL** and, in fact, in terms of the Patna High Court Rules relating to **PIL**, a certificate is required to be submitted by an applicant stating that none of his *personal interest* is involved in the public interest litigation, whereas the prayers, for stay of *suspension* and *quashment*, made by Sri Kuldip Narayan had no element of *public interest*, but purely private and individual interest.

**WAS SHRI KULDIP NARAYAN'S INTERLOCUTORY APPLICATION, SEEKING INTERVENTION OF HIGH COURT IN A PIL, SUSTAINABLE? CAN A COURT MAKE AN INTERIM ORDER ON AN INTERLOCUTORY APPLICATION IF THERE IS NO SUBSTANTIVE APPLICATION AND IF THE COURT DOES NOT HAVE THE POWER TO FINALLY GRANT A RELIEF, WHICH THE INTERLOCUTORY APPLICATION SEEKS, CAN IT GRANT ANY RELIEF, WHICH IS INTERIM IN NATURE?**

**31.** It may be noted that Shri Kuldip Narayan is a member of All India Service, i.e., Indian Administrative Service, and the State Government is the cadre controlling authority. In exercise of powers under Section 3(1)(a) of the All India Service (Disciplinary & Appeal) Rules, 1969, the State Government had decided to initiate departmental proceedings against the said officer and, in contemplation thereof, it decided to suspend him in exercise of the statutory powers conferred on the State by the said Statute. The officer was personally



impugning the action of the State in his personal capacity and seeking a personal and private relief of not only stay of his suspension, but also for getting the order of suspension quashed, though he had right either in moving the Central Administrative Tribunal or in a separate writ petition if he could make out a case for invoking the extra ordinary jurisdiction of the High Court under Article 226 of the Constitution of India; but in a **PIL**, and that too, by a mere interlocutory application, no such relief could have been sought for, or granted, either for limited or unlimited purpose. It is trite that a Court will not pass any interim order which it cannot pass finally; whereas the present one was a case, wherein Sri Kuldip Narayan had challenged the legality of his suspension by way of an *interlocutory application* and not even by means of any substantive application.

**32.** In ***Ashok Kumar Pandey v. State of West Bengal***, reported in **(2004) 3 SCC 349**, the relevant observations, appearing at paragraph 16, read as follows,

"... .. Though in *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra (1998) 7 SCC 273*), this Court held that in service matters PILs should not be

*entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision".*

(Emphasis is supplied)

**33.** The said position was reiterated by the Supreme Court, in ***Grijesh Shrivastava and Others v. State of Madhya Pradesh and Others***, reported in ***(2010) 10 SCC 707***, in the following words,

**"15.** *In Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra<sup>1</sup> a three-Judge Bench of this Court held that a PIL is not maintainable in service matters. This Court, speaking through Srinivasan, J. explained the purpose of administrative tribunals created under Article 323-A in the backdrop of extraordinary jurisdiction of the High Courts under Articles 226 and 227. This Court held: (SCC p. 281, para 18)*

**"18.** *... If public interest litigations at the instance of strangers are allowed to be entertained by the [Administrative]*

*Tribunal, the very object of speedy disposal of service matters would get defeated.”*

*Same reasoning applies here as a public interest litigation has been filed when the entire dispute relates to selection and appointment.*

**16.** *In B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees’ Assn. this Court held that in service matters only the non-appointees can assail the legality of the appointment procedure (see SCC p. 755, para 51 of the Report).*

**17.** *This view was very strongly expressed by this Court in Dattaraj Nathuji Thaware v. State of Maharashtra by pointing out that despite the decision in Duryodhan Sahu, PILs in service matters “continue unabated”. This Court opined that the High Courts should “throw out” such petitions in view of the decision in Duryodhan Sahu<sup>1</sup> (SCC p. 596, para 16).*

**18.** *Same principles have been reiterated in Ashok Kumar Pandey v. State of W.B.<sup>4</sup> (SCC at p. 358, para 16).*

**19.** *In a recent decision*



*of this Court delivered on 30-8-2010, in Hari Bansh Lal v. Sahodar Prasad Mahto, it has been held that except in a case for a writ of "quo warranto", PIL in a service matter is not maintainable (see SCC para 15)."*


(Emphasis is added)

**34.** The earlier view, which we have indicated above, has also been recently revisited and reiterated by the Supreme Court, in ***Ayaubkhan Noorkhan Pathan v. State of Maharashtra and Others***, reported in **(2013) 4 SCC 465**, wherein the Court, in paragraph 15, observed thus,

*"15. Even as regards the filing of a public interest litigation, this Court has consistently held that such a course of action is not permissible so far as service matters are concerned. (vide Duryodhan Sahu v. Jitendra Kumar Mishra (1998) 7 SCC 273), Dattaraj Nathuji Thaware v. State of Maharashtra (2005) 1 SCC 590 and Neetu v. State of Punjab (2007) 10 SCC 614)."*


(Emphasis is supplied)

**35.** If this be the law and the legal



position as consistently held by the Supreme Court, Division Bench, in **second PIL**, could have, with greatest respect, referred the matter to a Full Bench instead of entertaining I. A. No. 9327 of 2014, filed by Shri Kuldip Narayan, challenging, in a pending **PIL**, his *suspension* with prayers of stay thereof and its *quashment*. Such an application was totally foreign to a **PIL**; more so, in the **second PIL**, wherein subject matter was entirely different. It is not that Shri Kuldip Narayan was remediless. He had a statutory remedy before the Central Administrative Tribunal or, if so advised, by an independent writ petition. He and his learned counsel were aware of the order of the first Division Bench passed, in the *pre lunch session*, in the **first PIL**, on 15.12.2014 and so was the second Division Bench made aware of the order aforementioned of the first Division Bench in the **first PIL**; yet a dispute, relating to service matter, was entertained in the **second PIL** by the second Division Bench ignoring the law laid down by the Apex Court as stands indicated above I would, accordingly, dismiss I.A. No. 9327 of 2014, filed on 15.12.2014, by Shri Kuldip Narayan, in C.W.J.C. No. 8152 of 2013.


**36.** Coupled with the above, it is,



unavoidably worth pointing out that in a case, where final order cannot be passed, interim order ought not have been passed. If the court could not have quashed the order placing Shri Kuldip Narayan under suspension, the question of granting stay of such an order did not arise at all. It would have been a different matter, had Shri Kuldip Narayan merely laid information, in the **second PIL**, that he was unable to perform the duties assigned to him by the Court, because of his suspension and, then, the Court could have taken initiative to do the needful.


**37.** Unbelievably, Shri Kuldip Narayan, with the help of his I. A. NO. 9327 of 2014, did not merely inform the Court, in **second PIL**, that he was unable to carry out the directions of the court; rather, he applied for quashing and stay of the order putting him under suspension pending drawing of departmental proceeding and operation of this order was stayed in the *post lunch session*, on 15.12.2014, in the **second PIL**.

**38.** Amazingly enough, Shri Kuldip Narayan, in his I. A. No. 9327 of 2014, while putting to challenge the Government's Resolution, dated 12.12.2014, placing him under suspension, as



indicated hereinbefore, has alleged that in the garb of his failure as Commissioner, Patna Municipal Corporation, he, for extraneous reasons and not for any dereliction of his duties, has been placed under suspension by the Government's Resolution, dated 12.12.2014. The accusation, so made by Shri Kuldip Narayan, meant that he was inviting the Court to decide not merely the correctness and legality of the suspension order, but also the motive behind the issuance of the impugned Resolution placing him under suspension and, in this regard, he has also alleged that the impugned Resolution has been passed in collusion with some influential and powerful builders. Interestingly though, no material particular was, in this regard, placed on record by Shri Kuldip Narayan and no name of any builder has been mentioned on this aspect of the case by Shri Kuldip Narayan. It remains, therefore, a mystery as to who those influential and powerful builders are, though the law is fairly settled that if collusion is alleged, the name or names of the person or persons, who have colluded, must be disclosed in the pleadings.

**39.** In the **second PIL**, thus, Shri Kuldip Narayan was inviting the Court to determine the merit



of his suspension including the motive in issuing the impugned Resolution; whereas the real purport and motive of his suspension order can be examined, if challenged, by the Central Administrative Tribunal, as Shri Kuldip Narayan is an IAS Officer and, it is in a rare, rather, very rare case, that the matter may, perhaps, be examined in a proceeding under Article 226 of the Constitution of India provided that the order of suspension suffers from any constitutional infraction or infirmity.

**40.** Very hesitantly and with greatest respect, I am constrained to say that in the **second PIL**, the Division Bench entered into the merit of the impugned Resolution, placing Shri Kuldip Narayan under suspension, which could not have entered into in the light of the observations, which had been made in the **first PIL**.

**41.** I am pausing here to point out, as I have already indicated above, that there are materials on record showing severe strictures having been passed by various Courts against Shri Kuldip Narayan and, in a proceeding, like Public Interest Litigation, the Court will not enter into the merit of a suspension order, when the officer, who was not to be transferred

without leave of the Court, has not till date been transferred and, in fact, an application is on record, whereby the State Government has sought for leave of the Court to withdraw the suspended officer and it would be for the Court to decide whether to allow or not to allow such withdrawal of Shri Kuldip Narayan from the post of Commissioner, Patna Municipal Corporation, while he remains placed under suspension.

**A FULL BENCH, THOUGH NOT AN APPELLATE BENCH, NEVERTHELESS OWES A DUTY TO RESOLVE CONFLICT IN THE PERCEPTION OF LAW BETWEEN TWO DIVISION BENCHES AND IN THE DIRECTIONS EMANATING FROM TWO CO-ORDINATE BENCHES**

42. I remind myself, again and again, that this Full Bench is not sitting as an appellate Court over the correctness of the decision of the second Division Bench in relation to the suspension of Shri Kuldip Narayan. This Full Bench, however, has the onerous task and/or the obligation to lay the correct position of law governing the subject and adopt, with utmost respect, that course of action, which judicial propriety demands the Full Bench to adhere to by bringing consistency in the conflicting observations and such directions which are colliding with each other so as to reach certainty and consistency in the judicial

proceedings.

**CAN A COURT, WHILE DEALING WITH A PIL, GIVE AT THE INSTANCE OF NOT THE AGGRIEVED PERSON, BUT AT THE INSTANCE OF THE SON OF THE AGGRIEVED PERSON, GIVE DIRECTIONS RESTRAINING INVESTIGATION INTO THE ALLEGED COMMISSION OF OFFENCES.**

**43.** It may be noticed that in course of hearing before the Full Bench, Mr. Jyoti Ranjan Jha, Advocate, has intervened, on behalf of one Shri Amitesh Kumar, who has filed I. A. No. 9094 of 2014, on 08.12.2014 – as I have already noted above – making a grievance that his father, Shri Lalan Prasad Singh, an Executive Engineer of Kankarbagh Division of the Patna Municipal Corporation, was wrongly being proceeded against by the Vigilance Department of the State and, on the basis of a First Information Report lodged in this regard, a case had been registered against his father. On this interlocutory application filed in the **second PIL**, the second Division Bench passed, on 09.12.2014, an interim order prohibiting taking of any coercive steps against Shri Lalan Prasad Singh meaning thereby that he could not have been even arrested and his custodial interrogation was impermissible until the Court took a different view nor was any search or seizure, in this regard, possible.

**44.** It may be noted and noted with some concern that Shri Lalan Prasad Singh chose not to move the Court himself seeking any relief, much less in the **PIL**, but his son moved the said interlocutory application and sought a personal relief for his father. This, again, I find curious and not permissible. No hesitation, therefore, in holding, with, however, all humility and respect, that the said interlocutory application, in the **second PIL**, was wholly misconceived in law and not maintainable and I hold accordingly. I. A. No. 9094 of 2014, filed by Mr. Amitesh Chandra, is dismissed summarily.

**WHETHER CONSTITUTION OF THIS FULL BENCH IS CORRECT AND VALID: SHADOW OF JUDICIAL PROPRIETY**

**45.** Now, I would like to deal with the objection of Mr. Y. V. Giri, learned Senior Counsel, and Mr. Jyoti Ranjan Jha, Advocate, with reference to the Patna High Court Rules not permitting reference to Full Bench in the present factual matrix. First reliance has been placed on Rules 11 and 12 of Chapter II of Patna High Court Rules, as also Rule 1 of Chapter V of Patna High Court Rules. The said Rules, for convenience, are quoted hereunder :-

**"Chapter II-**  
*Constitution of Benches and Powers of Benches and of the*

Registrar-

XX XX XX  
XX XX XX


"11. Notwithstanding anything to the contrary in the rules the Chief Justice may direct that any application, petition, suit, appeal or reference shall be heard by a full Bench.

12. A Full Bench shall be a Bench of any number not less than three Judges

**Chapter V- Reference to a Full Bench-**

1. Whenever a Division Bench desires and the Chief Justice consents that any case shall be referred to a Full Bench, or whenever in any case a Division Bench differs from any other division Bench upon a point of law or usage having the force of law, such case shall be referred for decision by a Full Bench."


**46.** Before proceeding further with this aspect of the submission, I may also notice the argument of Mr. Jyoti Ranjan Jha, learned counsel, that the expression 'Chief Justice', as used in Patna High Court Rules, does not mean and would not include 'Acting Chief Justice'. I am unable to agree with this argument for the simple reason that it is only in absence of the Chief Justice, a puisne Judge is notified to take charge and perform the functions of Chief Justice and there is no restriction on the powers of the Acting Chief Justice in this regard.



**47.** It is also contended by Mr. Jyoti Ranjan Jha, learned counsel, that since the Full Bench was constituted by the then Acting Chief Justice, the Full Bench should, now, be presided over by Hon'ble the Chief Justice. This submission does not take notice of the fact that a *cause list* is published by the order of Hon'ble the Chief Justice and it is the decision of Hon'ble the Chief Justice that these cases are listed before this Bench.

**48.** In fairness to Mr. Giri, I must notice that his submission has been that the Acting Chief Justice did not exercise powers under Rule 11 of Chapter II of the Patna High Court Rules and there being no difference of opinion between the order passed in the **first PIL** and any order passed in the **second PIL**, powers under Rule 1 of Chapter V of Patna High Court Rules could not have been exercised. He places reliance on two Division Bench decisions of this Court in the cases of **An Advocate v. The Registrar, Patna High Court and others**, reported in **1990 BBCJ 813**, and **High Court of Judicature at Patna v. Ramawatar Singh**, reported in **1993(1) PLJR 644**.

**49.** First, I would like to notice the true



import of the Rules aforesaid. Rule 11 of Chapter II clearly gives overriding power to the Chief Justice to direct any matter to be heard by a Full Bench. There is no condition or limitation attached thereto. When we come to Chapter V, Rule 1, it is in two parts. Firstly, where a Division Bench desires and the Chief Justice consents, the case shall be referred to Full Bench. Secondly, where any subsequent Division Bench differs from an earlier Division Bench, then, the case shall be referred for a decision to the Full Bench.

**50.** Thus, Rule 11 of Chapter II is an independent power of the Chief Justice , whereas, the first part of Rule 1 of Chapter V is dependent upon the desire of a Division Bench and consent of the Chief Justice thereto irrespective of whether there is difference of opinion or not. Such cases are well known, where question of great importance is desired to be decided by a larger body of Judges and the Chief Justice agrees to it. The second part of Rule 1 clearly predicates the situation of difference of opinion and in such a situation, no consent of the Chief Justice is necessary.

**51.** In my considered view, the Rules aforementioned clearly postulate the position of the

Chief Justice as the Master of roster.

**52.** In fairness to Mr. Giri, who relies on the aforesaid two decisions of the Division Bench of this Court to submit that once any matter is placed before a Judge or a Bench, then, the Chief Justice ceases to have jurisdiction to re-allocate the matter or refer the pending case to Full Bench, I cannot accede to the very wide generalized proposition so advanced. In this regard, I may, first, take note of the case of **Inder Mani v. Matheshwari Prasad**, reported in **1996(6) SCC 587**, wherein at paragraph No. 7, it has been held as under :-

**"7.** ..... *It is the prerogative of the Chief Justice to constitute benches of his High Court and to allocate work to such benches. Judicial discipline requires that the puisne Judges of the High Court comply with directions given in this regard by their Chief Justice. In fact it is their duty to do so. Individual puisne Judges cannot pick and choose the matters they will hear or decide nor can they decide whether to sit singly or in a Division Bench. When the Chief Justice had constituted a Division Bench of Justice V.N. Khare and the learned Judge, it was incumbent upon the learned Judge to sit in a Division Bench with Justice V.N. Khare and dispose of the work assigned to this Division Bench. It was most improper on his part to disregard the administrative directions given by the Chief Justice of the High Court and to sit*

*singly to take up matters that he thought he should take up. **Even if he was originally shown as sitting singly on 22-12-1995, when the Bench was reconstituted and he was so informed, he was required to sit in a Division Bench on that day and was bound to carry out this direction.***

**53.** I may, then, refer to the case of **State of Rajasthan v. Prakash Chand and others**, reported in **1998 (1) SCC 1**, wherein at paragraph 22, their Lordships have said thus :


*" **22.** ..... a catena of authorities, rejected the arguments of the learned counsel and opined that the order of the Chief Justice, on an application filed by the Chief Standing Counsel, to refer a case, which was being heard by the Division Bench, for hearing by a larger Bench of three Judges because of the peculiar facts and circumstances as disclosed in the application of the Chief Standing Counsel, was a perfectly valid and a legally sound order."*

**54.** Then, in paragraph 23 of **Prakash Chand** (supra), their Lordships held thus:

*"**23.** .....**No legal system can permit machinery of the Court to collapse. The Chief Justice has the authority and the jurisdiction to refer even a part-heard case to a Division Bench for its disposal in accordance with law where the Rules so demand. It is a***

***complete fallacy to assume that a part-heard case can under no circumstances be withdrawn from the Bench and referred to a larger Bench, even where the Rules make it essential for such a case to be heard by a larger Bench.***

**55.** There are other decisions of the Supreme Court, which clearly lay down that the Chief Justice of a High Court is clearly the Master of the Roster. [See **(2006) 8 SCC 294, (2008) 3 SCC 542 and (2010) 10 SCC 320**]. In the present case, the Division Bench in the **first PIL**, clearly held that the matter of suspension of Shri Kuldip Narayan could not be made subject matter in **a PIL** and *until the time a permanent arrangement is made by the State Government by withdrawing suspension of Shri Kuldip Narayan, functions of the Patna Municipal Corporation*. Though the directions aforementioned were passed in the *post lunch sessions*, on 15.12.2014, in the **first PIL**, the Division Bench, in the **second PIL**, on the same very day, i.e., in the *pre lunch sessions*, on 15.12.2014, entertained interlocutory application of Shri Kuldip Narayan for staying and setting aside his order of *suspension* passed by the State Government. This was not only entertained, but the order of *suspension* was stayed effectively deviating from, and



setting at naught, the order passed, in the **first PIL**, that *until the time a permanent arrangement is made by the State Government by withdrawing suspension of Shri Kuldip Narayan, functions of the Patna Municipal Corporation*. Clearly, the Division Bench, in the **second PIL**, chose to differ from the order passed on the same day earlier in the **first PIL**. Judicial propriety does not permit this. It was open to the Division Bench, while dealing with the **second PIL**, to take a different view of the matter, but judicial propriety and the Patna High Court Rules demanded that in latter case, there being a difference of opinion, the matter needed to have been referred by the Division Bench, which was in seisin of the **second PIL**, to a larger Bench instead of proceeding to decide the matter on merits and even granting stay.

**56.** With regard to the above, I may only refer to one decision of the Supreme Court in **Assistant Collector of Estate Duty v. Devaki Ammal**, reported in **1995 Supp (2) SCC 39**, and, in particular, what their Lordships have observed, in paragraph 3, which reads as follows :-

" **3.** *We are at a loss to understand how, once one Division Bench of a High Court has held a particular provision of law to be constitutional and not violative of*

*Article 14, it is open to another Division Bench to hold that the same provision of law is unconstitutional and violative of Article 14. Judicial discipline demands that one Division Bench of a High Court should, ordinarily, follow the judgment of another Division Bench of that High Court. **In extraordinary cases, where the latter Division Bench finds it difficult, for stated reasons, to follow the earlier Division Bench judgment, the proper course is to order that the papers be placed before the learned Chief Justice of the High Court for constituting a larger Bench.** Certainly, where one Division Bench has held a statutory provision to be constitutional it is not open to another Division Bench to hold otherwise."*

(Emphasis is supplied)

**57.** Thus, in my view, the stand that the reference to Full Bench was incompetent on the grounds aforesaid has to be rejected. I would, therefore, hold that there being a difference of opinion and a real conflict of orders between the two Division Benches in respect of the same issue, as rightly submitted by the learned Principal Additional Advocate General, the cases were rightly ordered to be placed before a Full Bench; rather, in such a situation, it was the duty of the Acting Chief Justice to do so to arrest the conflicting orders to continue. I may add that the

ultimate decision taken by the Chief Justice is an administrative decision upon reference by a Division Bench or even *suo motu*.

**WHETHER PATNA HIGH COURT RULES, DEALING WITH PIL, PROHIBITS MAKING OF REFERENCE TO FULL BENCH?**

58. Now, I may refer to the argument in this regard independently made by Shri Jyoti Ranjan Jha, Advocate. He argues that under the Patna High Court Rules, there is Chapter XXI-CC dealing with Public Interest Litigation. There being special rules for PIL, the general rules would not apply. This Chapter does not provide for reference to Full Bench and, as such, no PIL could be referred to Full Bench. The rules, relating to PIL, are not exhaustive. They touch upon only certain aspects. We may refer to Rules 8 and 9 of this Chapter, which are quoted hereunder and they themselves in clear terms demolish the argument of the learned counsel :

**" Chapter XXI-CC-  
Rules of Patna High Court to deal  
with Public Interest Litigations.**

xx                      xx                      xx

xx                      xx                      xx

8. *The procedure for dealing public interest litigation shall otherwise be the same as that for a Civil Writ Jurisdiction case requiring consideration by a Division Bench, usually headed by*

*the Chief Justice or by any other Bench assigned by the Chief Justice.*

*9. The procedure in these Rules shall be without prejudice to the power of the Court under Articles 226 and 227 of the Constitution under which the Bench hearing a PIL, may in the interest of justice and to promote public interest devise special procedure for satisfying itself with the credentials and bona fide of the petitioner and also to find out relevant facts deemed necessary for the purpose of the case."*


**59.** From the provisions embodied in Chapter XXI-CC relating to the rules of the Patna High Court, which deals with Public Interest Litigation, it is made clear that the procedure for dealing with Public Interest Litigation shall be, except as has been provided, in the rules of the Patna High Court, dealing with Public Interest Litigation, the same procedure shall be applied which is resorted to in the case of a case of civil writ jurisdiction and that the procedure so prescribed, shall be without prejudice to the power of the Court under Articles 226 and 227 of the Constitution of India.

**60.** Here, I would also like to consider the decision of the Supreme Court in **Gopakumar B. Nair v. CBI and another**, reported in **(2014) 5 SCC 800**, as cited by Mr. Giri. He submits that the larger

Bench can overrule a question of law, but cannot *undo inter party orders*. As a proposition of law, this submission is wholly correct. However, this proposition of law does not apply to the facts of the present proceedings as the Full Bench has been constituted to consider the correctness of an approach and the cases as a whole, with the proceedings therein, have been placed before the Bench, so that divergence in the proceedings be arrested, otherwise, a Division Bench would proceed in the same matter in an opposite direction of a binding precedent in relation to the same person, which is a most undesirable state of affairs for a judicial system. There has to be consistency in judicial approach.

**WHETHER THE STATE GOVERNMENT CEASES TO HAVE POWER TO SUSPEND AN OFFICER OF INDIAN ADMINISTRATIVE SERVICE IF HE IS APPOINTED AS COMMISSIONER, PATNA MUNICIPAL CORPORATION?**

**61.** Now, I may come to the second line of submission made by Mr. Giri. He submits that once Shri Kuldip Narayan, IAS, was appointed as Municipal Commissioner, State Government was incompetent to take any disciplinary action against him, when he was under the control of the Municipal Corporation, which alone was competent to take any action. Since the



submission so made by Mr. Giri, learned Senior Counsel, relates to legality or merit of the suspension order, I would consciously refrain myself from making any observation on this aspect of the submissions of Mr. Giri; more so, when I am clearly of the view that neither an interlocutory application nor even a substantive application, relating to *service dispute*, could have been entertained in a pending PIL inasmuch as the suspension order was passed pending drawing of disciplinary proceedings or in contemplation thereof and was, thus, a purely service matter, unless the dispute required issuance of a writ in the nature of *quo warranto*, which is not the case at hand.

**62.** Though, I am clearly of the view that the interlocutory application, made by Shri Kuldip Narayan, seeking stay and quashing of the order of his suspension, was not entertainable in the **second PIL**, yet in order not to be seen evasive, I record the reasons for not accepting the contention of Mr. Y. V. Giri, learned Senior Counsel, that the State Government was not competent to take disciplinary action against Shri Kuldip Narayan. These reasons are, however, for the purpose of rejecting the submissions

so made on behalf of Shri Kuldip Narayan. No doubt, in terms of proviso to sub-section (7) of Section 36 of the Bihar Municipal Act, 2007, if the Empowered Standing Committee of the Municipal Corporation so decides, the State Government is obliged to terminate the appointment of such officer; yet this Section itself authorizes the State Government to terminate such an appointee made by it. For convenience, Section 36(7) of the Bihar Municipal Act, 2007, is quoted hereunder:-

**"36. Officers of Municipality -**

XX XX XX XX  
XX XX XX XX

(7) *Notwithstanding anything contained in the foregoing provisions of this section, the State Government may, at any time, in the case of any person appointed to any post referred to in sub-section (1), terminate his appointment :*

*Provided that if, in the case of any such officer, the empowered Standing Committee so decides, the State Government shall terminate the appointment of such officer."*

**63.** That apart, there is a fundamental flaw in the argument of Mr. Giri, learned Senior Counsel. Shri Kuldip Narayan was appointed as Municipal Commissioner by virtue of his being an officer of the Indian Administrative Service, the cadre

controlling authority whereof is the State Government. The disciplinary control of any officer of this cadre flows from All India Service (Disciplinary and Appeal) Rules, 1961, and, in particular, Section 3 thereof. That power of the State Government cannot be stultified in any manner and that power is an absolute power of the cadre controlling authority over the officers in the cadre.

**64.** Notwithstanding appointment of an IAS officer as a Municipal Commissioner, he does not cease to be an IAS Officer. He is merely deputed, as such, to perform the function of the Municipal Commissioner as by law provided. He remains under the disciplinary control of the State. I, therefore, agree with the submission of the learned Principal Additional Advocate General and reject the contention as raised by Mr. Giri, in this regard, by holding that the appointment of a Municipal Commissioner is by virtue of an appointment of IAS with the State Government as a Cadre Controlling Authority and this control does not cease to exist merely because an IAS Officer has been appointed as a Municipal Commissioner. The Cadre Controlling Authority has the power to suspend the officer even if he is on deputation.

**WAS CONTEMPT PROCEEDING DRAWN OR**

**ATTEMPTED TO BE DRAWN IN THE PRESENT CASE?**

**65.** However, if the second Division Bench, in the **second PIL**, was of the view that the order, placing Sri Kuldip Narayan under suspension, constituted contempt of Court, notices ought to have been issued, in this regard, to the person or persons concerned; whereas no such step was taken. Far from this, the order of suspension was itself stayed. If Shri Kuldip Narayan's suspension had been ordered for misappropriation of the funds of Patna Municipal Corporation, could his *suspension* have been stayed, in the **second PIL**, on the ground that his transfer without Court's leave had been prohibited and his *suspension* for alleged misconduct of fund of Patna Municipal Corporation was *mala fide* and tantamount to setting at naught the said restraint order passed in the said PIL? The answer has to be, and can only be, an emphatic 'no'.

**66.** There is yet another aspect, which needs to be dealt with, though this aspect would not have been required to be dealt with except for the reason that a specific submission has been made, which constrains the Court to deal with the same.

**CONDUCT OF SHRI KULDIP NARAYAN**

**QUESTIONED**

**67.** Appearing on behalf of Shri Kuldip Narayan, Mr. Y. G. Giri, learned Senior Counsel, has submitted that Shri Kuldip Narayan, though a party to the **first PIL**, relating to solid waste management, he was, actually not responsible for the project and it was Additional Commissioner, Patna Municipal Corporation, who was the one responsible in terms of the orders passed in the **second PIL**, relating to High rise building.

**68.** Since the above aspect of the submission made on behalf of Shri Kuldip Narayan, relates to the merit of his suspension, I would merely comment that it was never brought to the notice of the Court, in the **first PIL**, that Shri Kuldip Narayan was not responsible for the project, which forms the subject matter of the **first PIL**. Contrary thereto, Shri Kuldip Narayan had all along been represented by his learned Counsel and he has, in fact, entered personal appearance, in the **first PIL**, to explain as to why the project was being delayed, though the project was wholly indispensable in order to do away with the environmental and health hazard, which had been affecting the residents of the locality in the area,

where the solid waste is being dumped.

**69.** Either, therefore, Shri Kuldip Narayan had been misleading the Court, in the **first PIL**, all along or he is, now, trying to escape, because the orders, passed in the **first PIL**, relating to the solid waste management, indicate failure of Patna Municipal Corporation and forms, according to his suspension order, one of the grounds of his suspension inasmuch as the order of suspension mentions, *inter alia*, that there has been failure of Shri Kuldip Narayan as Commissioner, Patna Municipal Corporation, in dealing with the issue of dumping of solid waste.

**70.** At the cost of repetition, it is only because Mr. Y. V. Giri, learned Senior Counsel, vehemently argued, I have noticed these arguments for its rejection; otherwise, the question of merit or demerit of *suspension order* cannot, in my considered opinion, be made a subject-matter of determination in a PIL. As already held, Shri Kuldip Narayan had the remedy before Central Administrative Tribunal or in a separate writ, but not in PIL, by way of interlocutory application.

**WAS ANY PREJUDICE CAUSED TO THE PETITIONERS, IN THE FIRST PIL, BY CONSTITUTION OF THIS FULL BENCH? OTHER**

**MISCELLANEOUS SUBMISSIONS MADE BEFORE THIS BENCH**


**71.** Now, coming to the submission of Mr. Shreeprakash Srivastava, Advocate, suffice to say, as I have already noted, that he could not point out as to how he was at all prejudiced by the reference to Full Bench. How his writ petition was to be adversely affected in any manner, he could not point out.

**72.** In short, therefore, the **first PIL**, relating to solid waste management, is not affected by the present controversy and the petitioners of the first **PIL**, relating to solid waste management, cannot raise any objection to the *reference* being made to the Full Bench. Interestingly though, Mr. Vitesh Kumar Singh, learned Counsel for the petitioner in the **second PIL**, has not made any specific submission in this regard.

**73.** Though I. A. No. 59 of 2015 has been filed by an association of retired IAS Officers and though time was taken to make submissions, on behalf of the applicants, by Mr. Vinod Kanth, learned Senior Counsel, none, eventually, appeared to press this application and I. A. No. 59 of 2015 stands, therefore, rejected.

**ATTEMPT TO SCANDALIZE THIS FULL BENCH**


**74.** Now, I may deal with I.A. No. 108 of



2015 filed in C.W.J.C. No. 8152 of 2013. This interlocutory application has been filed by Mr. Prasoon Sinha, Advocate, strictly in his individual capacity. It has not been filed on behalf of any of the parties to the writ petition, much less on behalf of Shri Kuldip Narayan or on his instructions. By this application, he has sought Justice Navaniti Prasad Singh to recuse from being a Member of the Full Bench and hearing this matter on the ground of likelihood of *bias* against Shri Kuldip Narayan. Once again, I would note that Shri Kuldip Narayan has raised no such apprehension. What was the interest of Shri Prasoon Sinha, Advocate, is not understood except to embarrass and scandalize the Court. The Advocate General, as also the Principal Additional Advocate General, have strongly opposed the said application contending that it is scandalous, unbecoming for an Advocate being an officer of the Court and verges on contempt. On the other hand, Mr. Kumar Amitesh Chandra, learned Counsel, as noted earlier, placed on record some orders of different Courts in different proceedings, wherein different Benches, including that of Justice V. N. Sinha, had passed severe strictures against Shri Kuldip Narayan. Mr. Kumar Amitesh Chandra

questioned the *bona fide* of Shri Prasson Sinha, Advocate, in choosing to ignore these orders and strictures, while raising the plea of likelihood of *bias* against one Member of the Full Bench.

**75.** Firstly, I would like to note that the plea of *bias* or likelihood of *bias* is a personal plea to be raised by a litigant at the earliest opportunity. Here, I may specifically note that though Shri Kuldip Narayan filed an interlocutory application seeking personal relief for stay of his suspension order and its quashment and, as noted earlier, he also filed an interlocutory application questioning the legality of the reference to Full Bench and was represented by the learned Senior Counsel Mr. Y. V. Giri, there is, nowhere, a whisper with regard to likelihood of *bias* as against any Member constituting the Full Bench. In this perspective, it is curious as to why and how Shri Prasson Sinha, as an independent Advocate, could raise such a plea of likelihood of *bias* at all. It must be remembered that an Advocate is first an officer of the Court. He is never permitted to identify himself with the cause or the case of any litigant. No Advocate, at large, can intervene in any proceeding inter party. Obviously, the interlocutory application, moved by Mr.



Prasoon Sinha, in his individual capacity, lacks *bona fide*. As rightly submitted by learned Advocate General and learned Principal Additional Advocate General, it is only to scandalize and embarrass the Court so that this Full Bench does not hear the matter. One must remember that the PIL means a Public Interest Litigation and not a personal interest litigation or a publicity interest litigation. Courts cannot permit Public Interest Litigation to be degenerated into either a personal interest litigation or a publicity interest litigation. It is totally an unprofessional and unethical conduct for a lawyer of the standing of Mr. Prasoon Sinha.

**76.** In his affidavit, Mr. Prasoon Sinha, Advocate, has referred to a case, being M.J.C. No. 3939 of 2014, arising out of C.W.J.C. No. 23620 of 2013, which was filed for initiating a proceeding of contempt against, *inter alia*, Shri Kuldip Narayan, the Municipal Commissioner. Mr. Prasoon Sinha has made insinuations against Justice Navaniti Prasad Singh, who was dealing with the said case, noting various oral observations, which, allegedly, took place during the court proceedings. Fortunately, he has annexed the order passed in those proceedings (Annexure

RR/B). Nothing of what he has said in his affidavit is borne out by the records, much less by the final order, which was passed in the case. I would like to note the concluding part of the order, dated 07.11.2014, passed by Justice Navaniti Prasad Singh, in the aforesaid C.W.J.C. No. 23620 of 2013, which reads thus,

**"07.11.2014-**

**xx                    xx                    xx**  
**xx**  
**xx                    xx                    xx**  
**xx**

*6. It would, thus, be appropriate for the petitioner to move the Tribunal and seek appropriate relief in relation to the stay matter while the matter is pending before it and the Tribunal would be competent to pass such order as it would deem fit and proper in the facts and circumstances of the case.*


*7. This Court, in the peculiar facts of this case, would not like to observe anything further and the proceedings stand terminated.*

*8. With these observations and directions, this contempt petition stands disposed of."*

*Sd-/*

*Navaniti Prasad Singh, J".*

**77.** Then, Mr. Prasoona Sinha refers to certain communications as between the Collector, Munger, and the father of Justice Navaniti Prasad Singh, some of which communications are said to




have been made when Shri Kuldip Narayan was the Collector of the said district. How did Mr. Prasoon Sinha get these correspondences has not been disclosed by him. Who gave those papers to him is not disclosed by him. They are official communications from the Collector to an individual. Mr. Prasoon Sinha discloses them to be based upon his personal knowledge in the affidavit in support of the application. Apart from the fact that it does not involve Justice Navaniti Prasad Singh in any way, much less to raise a plea of likelihood of bias, it is not even raised by Shri Kuldip Narayan. All I can reply is what the Supreme Court observed in the case of **Ashok Kumar Pandey** (supra) and, in particular, paragraph 16 thereof in regard to such document, as quoted hereinafter :.

**"16.** *The other interesting aspect is that in the PIL, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it,*

*he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petition but to also impose exemplary costs. It would be desirable for the Court to filter out frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts."*

**78.** I say no more.


**79.** There is yet another pleading in the application filed by Mr. Prason Sinha, Advocate. I wonder from where Mr. Prason Sinha, Advocate, got the same. It is an order passed by Justice Navaniti Prasad Singh in C.W.J.C. No. 21170 of 2013, being order, dated 28.11.2013, wherein upon allegations of *bias* being made, even though not founded on facts and not found to be correct, the Court recuse itself from the proceedings. That order is annexed as Annexure RR/G to the affidavit of Mr. Prason Sinha. Probably, Mr. Sinha wants to use it as a binding precedent on Justice Navaniti Prasad Singh. I fail to



see what is the relevance thereof in the present matter. There the petitioner, for whatever it may be worth, had the courage to stand up and allege the apprehension of *bias*. He was not stranger to the proceedings, who had raised the plea. Commensurate to the majesty of the Court, though Justice Navaniti Prasad Singh was not bound to recuse himself, yet in larger interest of justice as "*Justice is not only to be done but seems to be done*", he recused himself. That cannot be used as a precedent. A warning is necessary. If such practice is allowed, then, any party can choose to say anything and embarrass a Court and manage to get its case transferred. That would not be conducive to the judicial system. It is because of this that I am constrained to observe that Shri Prason Sinha, Advocate, failed to appreciate the responsibility, which an Advocate owes to a Court. As rightly submitted by the learned Advocate General, it is a petition only to scandalize and embarrass the Court with oblique motive verging on contempt. No more words are necessary to express the anguish of the Court on such a conduct of an officer of the Court.

**80.** As noted earlier, Mr. Kumar Amitesh Chandra, Advocate, filed a number of order-sheets of






Prasoon Sinha in ignoring those strictures as given by one of the members constituting this Full Bench, while making out a case against another member of the Full Bench on the ground of likelihood of *bias*. This leads one to the lone and only conclusion, the conclusion being that the application filed by Mr. Prasoon Sinha, Advocate is not prompted by any public spirit and this petition deserves and needs to be rejected. The application is accordingly rejected.

**82.** By I.A. Nos. 9357 and 9359, both of the year 2014, in the **second PIL**, i.e., CWJC No. 8152 of 2013, since the State Government has sought for permission to withdraw Shri Kuldip Narayan from the post of Commissioner, Patna Municipal Corporation, it would be appropriate for the Bench, which would further deal with the matter to consider those applications at the first instance in accordance with law.

**83.** In the result, I dismiss I.A. No. 9094 of 2014, filed by Mr. Kumar Amitesh Chandra, in C.W.J.C. No. 8152 of 2013, as not maintainable. Similarly, I.A. No. 9327 of 2014, filed in C.W.J.C. No. 8152 of 2013, by Shri Kuldip Narayan, challenging therein his *suspension* and praying for its *stay* and



*quashment*, is also dismissed. I further dismiss I.A. No. 9498 of 2014, filed by Shri Kuldip Narayan, in C.W.J.C. No. 8152 of 2013, objecting to the *reference* to Full Bench, I.A. No. 9508 of 2014, in C.W.J.C. No. 8152 of 2013, on behalf of some of the Municipal Councillors, for impleadment in opposition to the *suspension order* of Shri Kuldip Narayan by the State Government, I.A. No. 91 of 2015, in C.W.J.C. No. 20570 of 2012, by the writ petitioner opposing *reference* to Full Bench and I.A. No. 108 of 2015 filed by Mr. Prasson Sinha, Advocate, in C.W.J.C. No. 8152 of 2013.

**84.** The divergence having been arrested, it would, perhaps, be for the cases to be reverted for further hearing by appropriate Bench. Let, therefore, these PILs be laid before Hon'ble the Chief Justice for consideration if the PILs need to be taken up by a regular Bench, when the purpose of constituting Full Bench is over.

**(I. A. Ansari, J.)**

Prabhakar Anand

**(Per: HONOURABLE MR. JUSTICE V. N. SINHA)**

Having gone through the erudite opinion of my

esteemed brother Ansari, J, I express my inability to agree with the same, hence, with utmost humility, proceed to record my own opinion in the matter.

2. Before I consider the prayer made in I.A. No. 9327 of 2014, it is necessary to notice few facts. Present Public/Social Interest Litigation was filed by Narendra Mishra asserting that a multi-storeyed apartment/complex is being raised in an 8 ft. wide lane off the East Boring Canal Road, Patna. The law, however, requires minimum 20 ft. wide road for raising such apartment/complex. During hearing of the writ petition this Court noticed under order dated 02.07.2013 that several other apartment/complex, 449 in number, have also been raised in violation of the building bye-laws and the different orders passed by this Court in the case of **Arun Kumar Mukherjee Vs. State of Bihar (C.W.J.C. No. 2290 of 1990)**. Close perusal of order dated 02.07.2013 further indicates that thereunder this Court noticed the order dated 15.11.1996 passed in the case of **Arun Kumar Mukherjee** (supra) whereunder this Court prohibited construction of high rise apartment on roads less than 15 ft. wide. Notwithstanding the building bye-laws and the order passed in the case of **Arun Kumar Mukherjee** (supra) mushroom growth of illegal

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apartments continued in the city of Patna over the years. Even after matter was brought to the notice of the Court complaining inertia on the part of the Patna Municipal Corporation (hereinafter referred to as the "Corporation") to regulate the building activities in the city because of the involvement of the mighty builders' lobby, the apathy of the Corporation to regulate the building activities, construction of the high rise building, contrary to the building bye-laws, continued, leading to mushroom growth in the number of apartments infracting the bye-laws affecting the life of the common man. The continued inertia of the Corporation to take action against those who, violating the building bye-laws, raised apartments made it necessary for this Court to direct the Corporation under order dated 02.07.2013 to proceed and take action against 449 apartments which have already been identified as also to finalize the case of 771 persons to whom notice has been issued seeking details of the constructions raised by them. This Court having realized that mere issue of mandamus directing the Corporation to perform its legal duty would be futile, it decided to keep the matter pending and issued direction from time to time requiring the Corporation to report progress of the action taken against those who have raised building violating the building bye-



laws or even without obtaining necessary sanction.

3. Having passed order dated 02.07.2013 this Court again listed the matter on 08.07.2013 at its own instance and observed that while finalizing the order dated 02.07.2013 Court felt the need for an additional direction with regard to tenure of posting/ frequent transfer of Municipal Commissioner, Patna causing hindrance in enforcement of building bye-laws placing reliance on the observation made by this Court under order dated 13.01.2000 passed in the case of **Arun Kumar Mukherjee** (supra) directed that the present Municipal Commissioner Sri Kuldip Narayan (I.A.S.) shall not be transferred without its permission both for the purpose of continuity and answerability. It would, therefore, appear that this Court entrusted the job of enforcing the building bye-laws by the Corporation to Sri Narayan whose transfer from the Corporation was restrained by this Court observing that he shall not be transferred without the permission of the Court. State assailed the aforesaid order dated 08.07.2013 by filing Special Leave to Appeal (Civil) No. 20197/2013 which was disposed of under order dated 25.11.2013 observing as follows :

*"Delay condoned.*

*We are not inclined to interfere with the impugned order passed by the High*


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*Court by which the High Court has directed that the Municipal Commissioner shall not be transferred without the permission of the Court. The State has not applied for permission as yet to transfer the Municipal Commissioner. In case, the State applies before the High Court for permission and the same is rejected by the High Court, it will be open for the petitioners to move this Court under Article 136 of the Constitution.*

*The Special Leave Petition is disposed of with the aforesaid observations.”*

4. In the light of the order dated 08.07.2013 and the order of the Supreme Court dated 25.11.2013 Sri Kuldip Narayan, Municipal Commissioner, Patna remained posted in the Corporation and through him this Court continued to monitor the implementation of the building bye-laws by the Corporation, which is evident from the subsequent orders passed in the writ case from time to time. Last order passed in this connection is Order No. 53 dated 27.11.2014, whereunder Sri Narayan, Municipal Commissioner was directed to dispose of all the vigilance cases in which he has concluded hearing and reserved the case for orders as early as possible, in any case, by 15.01.2015 as undertaken by him in the third supplementary affidavit. In the same order further direction was given to Sri Narayan, Municipal






Commissioner to dispose of other 274 vigilance cases initiated in the year 2013, 2014 by taking up hearing of those cases during day time further requiring Sri Narayan to pass orders in those matters also soon after the orders are passed in cases already reserved for orders maintaining seriatim to ensure their disposal as well, as early as possible, in any case, by 15.02.2015.

5. Counsel for the Corporation informed the Bench dealing with the instant writ case on Friday i.e. 12.12.2014 that Government has passed order for suspension of Sri Kuldip Narayan, Municipal Commissioner whereafter the Bench directed that the matter be listed on 15.12.2014 with further direction to the State counsel to seek instruction in the meanwhile. In the light of the aforesaid direction writ case was placed before the Bench dealing with the same on Monday i.e. 15.12.2014 in the afternoon session when I.A. No. 9327 of 2014 was filed by Sri Kuldip Narayan, Municipal Commissioner assailing the resolution dated 12.12.2014 suspending him from the post of Municipal Commissioner. In response to the prayer made in the said Interlocutory Application Bench was informed by Principal Additional Advocate General that the resolution suspending Sri Kuldip Narayan was placed before a Coordinate Bench of this Court today itself in the


forenoon when Coordinate Bench was considering another Public Interest Litigation relating to Solid Waste Management Project and Coordinate Bench observed that in a Public Interest Litigation suspension order of an officer cannot be assailed/ questioned. The Bench hearing Narendra Mishra matter (C.W.J.C. No. 8152 of 2013) in the afternoon of 15.12.2014 observed that it is cognizant of the legal position that even if transfer of a Government servant is stayed by the Court, the Government servant can still be placed under suspension by the Disciplinary Authority but went on to further observe that aforesaid legal position is not applicable to the facts of the present case in the background of the order dated 02, 08.07.2013 passed in the case of Narendra Mishra (C.W.J.C. No. 8152 of 2013) and the order of the Supreme Court dated 25.11.2013 whereunder Supreme Court disposed of the Special Leave Petition filed against the order dated 08.07.2013 observing that the State has not yet applied for permission to transfer the Municipal Commissioner but has approached the Supreme Court and further observed that in case the State applies before the High Court for permission and the same is rejected by the High Court it will be open for the State to move the Supreme Court under Article 136 of the Constitution. The State having not






applied for permission before the Bench hearing Narendra Mishra case (C.W.J.C. No. 8152 of 2013) to either transfer or suspend the Municipal Commissioner, it directed the State in the afternoon of 15.12.2014 to produce the file in which proposal to place Sri Kuldip Narayan under suspension was considered before the Bench tomorrow i.e. 16.12.2014 at 2.15 P.M. and until then stayed the operation of the resolution suspending Sri Kuldip Narayan. On 16.12.2014 Principal Additional Advocate General produced the concerned Government file before the Bench, as was directed under order dated 15.12.2014, whereafter counsel for Sri Kuldip Narayan and Principal Additional Advocate General were heard, Government files and copy of the order passed by the Coordinate Bench in C.W.J.C. No. 20570 of 2012 on 15.12.2014 in the forenoon was retained by the Bench and final order on the aforesaid Interlocutory Application filed by Sri Kuldip Narayan reserved with further direction that the interim order passed by the Bench on 15.12.2014 shall continue until final order is passed on the Interlocutory Application.

6. Principal Additional Advocate General mentioned C.W.J.C. No. 20570 of 2012 before the Coordinate Bench on 17.12.2014 and brought to its notice that another Bench of this Court in I.A. No. 9327 of 2014



arising out of C.W.J.C. No. 8152 of 2013 has made observations, passed direction in the afternoon of 15.12.2014 contrary to the observation and direction passed by it in the forenoon of 15.12.2014 in C.W.J.C. No. 20570 of 2012 and that State is placed in a situation that it is unable to effectively deal with the situation as conflicting observations, directions and orders have emanated from two different Benches of this Court which may impair administration of justice and undermine majesty of Rule of Law. Principal Additional Advocate General further brought to the notice of the Coordinate Bench that if the Bench in seisin of I.A. No. 9327 of 2014 in the afternoon of 15.12.2014 was of the opinion that it is required to take a different view from the one expressed under order dated 15.12.2014 passed in C.W.J.C. No. 20570 of 2012 in the forenoon directing Mr. Kapil Ashok to appear on behalf of the Corporation in C.W.J.C. No. 20570 of 2012 as the Incharge Municipal Commissioner, it would have been appropriate for the Bench dealing with the matter in the afternoon of 15.12.2014 to have referred the writ case and I.A. No. 9327 of 2014 to a Larger Bench for necessary decision. The Coordinate Bench having found substance in the submissions made by learned Principal Additional Advocate General, more particularly when it



noticed that the order dated 15.12.2014 passed in the afternoon in I.A. No. 9327 of 2014 set at naught the observation and direction given in order dated 15.12.2014 passed in C.W.J.C. No. 20570 of 2012 in the forenoon, observed under order dated 17.12.2014 that the Bench dealing with I.A. No. 9327 of 2014 has not expressed any view that the impugned order of suspension, the subject matter of I.A. No. 9327 of 2014, can be legally set aside and quashed in a Public Interest Litigation and considering the matter in its entirety observed in the interest of justice that a Larger Bench needs to be constituted for the purpose of dealing with both C.W.J.C. No. 20570 of 2012 as also I.A. No. 9327 of 2014 arising out of C.W.J.C. No. 8152 of 2013 to arrest the conflicting directions emanating from two different Benches of the High Court and directed the Registry to place the matter on its administrative side before Hon'ble the Chief Justice (Acting) for consideration if a Larger Bench needs to be constituted.

7. In the light of the observation/ direction contained in order dated 17.12.2014 passed in C.W.J.C. No. 20570 of 2012 Acting Chief Justice referred both C.W.J.C. Nos. 20570 of 2012, 8152 of 2013 and the Interlocutory Applications filed in the two writ petitions before a Full Bench so as to arrest the conflicting directions

emanating from two different Benches of this Court.

8. Learned counsel for the writ petitioners in C.W.J.C. Nos. 8151 of 2013, 20570 of 2012, 9574 of 2012, 11781 of 2014 and 16050 of 2014, counsel for the Corporation and its Commissioner, other Interlocutory Applicant(s) as also the counsel for 41 Ward Councillors of the Corporation assailed the reference order dated 17.12.2014 passed in C.W.J.C. No. 20570 of 2012 and submitted that if the order dated 15.12.2014, 17.12.2014 passed in C.W.J.C. No. 20570 of 2012 is closely examined there is no point of law which comes as a precedent i.e. proposition of law as laid down in the decision. Decision is a precedent if it decides question of law. The only exceptions are principles of *per incurium* and *sub silencio*. It is submitted that in the absence of any point of law the case may not be referred before the Full Bench. It is well settled that certainty of law cannot be sacrificed for bringing uniformity, however, in the absence of point of law, the case could not be referred to the Full Bench. The extension of law based on competing versions of legal propositions cannot be placed for consideration before the Full Bench. According to learned counsel reference order has been passed in teeth of the provisions of Patna High Court Rules contained in Chapter II Rule 11 and Chapter V



Rule 1. In support of their submission reliance is placed on the judgment of the High Court in the case of **An Advocate Vs. The Registrar, Patna High Court and ors. 1990 BBCJ 813**, Supreme Court in the case of **Sub-Committee of Judicial Accountability Vs. Union of India and others (1992) 4 Supreme Court Cases 97 Paragraph 5** as also the judgment of this Court in the case of **The High Court of Judicature at Patna Vs. Ramawatar Singh, Deputy Director of Computer, High Court, Patna 1993(1) PLJR 644 Paragraphs 9, 26, 26-A, 27** and with reference to the Constitution Bench judgment of the Supreme Court in the case of **Sub-Committee of Judicial Accountability** (supra) it is submitted that reference made to examine the correctness of the order dated 15.12.2014 passed in the case of Narendra Mishra (C.W.J.C. No. 8152 of 2013) while hearing Interlocutory Application No. 9327 of 2014 filed by Sri Kuldip Narayan is not permissible as no Coordinate Bench can even comment upon, let alone sit in judgment over the discretion exercised or interim order rendered in a cause or a matter before another Coordinate Bench. With reference to the judgment in the case of **The High Court of Judicature at Patna Vs. Ramawatar Singh** (supra) it is submitted that the Division Bench of this Court in the



said case held that a bare perusal of Rules 10, 10A of Chapter II of the Patna High Court Rules would indicate that the Rules put an express bar on the powers of Hon'ble the Chief Justice to do anything with regard to a pending matter before a Bench and submitted that while referring C.W.J.C. No. 20570 of 2012 for being heard by a Full Bench under order dated 17.12.2014 the Coordinate Bench ought not to have referred C.W.J.C. No. 8152 of 2013 for being heard by the Full Bench along with C.W.J.C. No. 20570 of 2012. In this connection they further pointed out that there is no conflict at all in the two orders passed on 15.12.2014 in C.W.J.C. Nos. 20570 of 2012, 8152 of 2013 and to arrest the same reference of the two matters to the Full Bench is necessary, as according to learned counsel while granting interim stay of resolution of the Government dated 12.12.2014 placing Sri Kuldip Narayan under suspension the Bench under orders dated 15, 16.12.2014 granted interim stay, reserving final orders on the Interlocutory Application filed by Sri Kuldip Narayan has itself observed that the Bench is cognizant of the legal position as even if transfer of a Government servant is stayed by the Court in Public Interest Litigation the officer can be placed under suspension by the Disciplinary Authority but the said legal position is not applicable to the

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case of Sri Kuldip Narayan as Sri Narayan was entrusted with the task of effective implementation of the building bye-laws by the Patna High Court in C.W.J.C. No. 8152 of 2013 and to ensure such task the Bench directed the Government not to transfer the present Municipal Commissioner Sri Kuldip Narayan without obtaining its permission. It is submitted that by placing Sri Narayan under suspension without obtaining permission from the Bench the Government has nullified the entrustment made by the Bench to Sri Narayan in C.W.J.C. No. 8152 of 2013 to effectively implement the building bye-laws without seeking its permission and in appreciation of such fact the Bench proceeded to grant interim stay of suspension, which fact was not brought to the notice of the Coordinate Bench when it proceeded to observe under order dated 15.12.2014 passed in the forenoon that suspension order of an officer cannot be the subject matter of Public Interest Litigation. Learned counsel for the petitioners in the case of Suresh Prasad Yadav (C.W.J.C. No. 20570 of 2012) additionally submitted that his consent has not been obtained by the Principal Additional Advocate General on 17.12.2014 before mentioning the matter for making reference and that reference order dated 17.12.2014 was passed behind his back.



9. Learned counsel for the Corporation further submitted that the order of the High Court dated 08.07.2013 having become final inter party cannot be challenged before the Full Bench as according to him reference to a Larger Bench necessarily has to be for reconsideration of the principle of law on which the case has been decided or interim order passed and not the merits of the decision. In this connection he relied on the judgment of the Supreme Court in the case of **Gopakumar B. Nair Vs. C.B.I. & Anr. 2014(2) PLJR 432 (SC) Paragraph 12** and submitted that order dated 08.07.2013 having been challenged before the Supreme Court and the challenge failed as the Special Leave to Appeal was disposed of under order dated 25.11.2013 with liberty to the State to seek permission of the High Court before removing Sri Narayan from the Corporation the State could not have suspended Sri Narayan without seeking leave from the High Court. In case, leave was refused by the High Court, the State had option to approach the Supreme Court but the State with a view to defeat the aforesaid order of the High Court and the Supreme Court chose to suspend Sri Narayan under resolution dated 12.12.2014. In appreciation of such fact and to continue the entrustment made to Sri Narayan to

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enforce the building bye-laws High Court has stayed the operation of resolution under interim order dated 15, 16.12.2014 the only option before the State is to assail the said interim order before the Supreme Court and not before the Full Bench.


10. Learned counsel also submitted with reference to the judgment of the Supreme Court in the case of **Shankara Cooperative Housing Society Ltd. Vs. M. Prabhakar and others (2011) 5 Supreme Court Cases 607 Paragraphs 73, 74** that suspension order of Sri Kuldip Narayan tantamounts to his removal from the Corporation nullifying the entrustment made by the High Court to Sri Narayan under order dated 08.07.2013 duly approved by the Supreme Court under order dated 25.11.2013 to effectively implement the building bye-laws without seeking its permission, the suspension of Sri Narayan is a nullity as the same has been passed ignoring the aforesaid order of the High Court, Supreme Court, which have become final.

11. Learned counsel for the Corporation further submitted that the Corporation is an independent autonomous body of local self governance established in the light of Part-IX-A of the Constitution of India and Bihar Municipal Act, 2007(hereinafter referred to as the Act),



Section 41 whereof empowers the State to withdraw the Municipal Commissioner as he is a member of the Indian Administrative Service (Bihar Cadre) and according to learned counsel so long Sri Kuldip Narayan continued on deputation with the Corporation, he could not have been suspended by the State until his services are withdrawn by the Government from the Corporation. In this connection, placing reliance on the judgment of the Supreme Court in the case of **Hukam Chand Shyam Lal Vs. Union of India and others A.I.R. 1976 Supreme Court 789**, learned counsel for the Corporation submitted that it is settled legal principle that where a Statute provides a power to be exercised in a particular manner, that power has to be exercised in that manner or not at all. It is submitted that Sri Narayan was appointed Municipal Commissioner in the Corporation by the State Government, this Court directed that Sri Narayan be not removed from the Corporation without its permission, as such, to defeat such mandate of the High Court duly approved by the Supreme Court Sri Narayan has been placed under suspension without seeking permission from the Court which tantamounts to his removal from the Corporation infracting the direction of the Court. In this connection, learned counsel further submitted that Sri






Narayan being an I.A.S. officer of the Bihar Cadre was appointed as Municipal Commissioner in the Corporation and so long he continued in the Corporation on the post of Municipal Commissioner he remained under the administrative control of the Empowered Committee of the Corporation and until his services are withdrawn by the State Government suo motu or in terms of the resolution of the Councillors, he could not have been placed under suspension by the State Government and his suspension tantamounts to infracting proviso to Section 41 of the Act.

12. Learned counsel for the Corporation and its Commissioner next submitted that C.W.J.C. No. 20570 of 2012 was not on the cause-list on 17.12.2014. If the State wanted any order to be passed in the said case, it was required to request the Bench to notify C.W.J.C. No. 20570 of 2012 either in the cause-list or by a special notice after obtaining consent of the learned counsel for the petitioners, which was never obtained.

13. Learned counsel next submitted that the State was not aggrieved in any manner in implementing the order dated 15.12.2014 passed in C.W.J.C. No. 20570 of 2012 in the forenoon and the another order passed in C.W.J.C. No. 8152 of 2013 passed on the same day in the afternoon as it was the Municipal Commissioner who had



to comply the same. The Municipal Commissioner's presence on 19.12.2014 during hearing of C.W.J.C. No. 20570 of 2012 was the obligation of the Corporation and its officials and not of the State. In this connection, it is also pointed out by the counsel for the Corporation that furnishing information about the factum of suspension of Sri Kuldip Narayan to the High Court on 15.12.2014 in the forenoon while hearing C.W.J.C. No. 20570 of 2012 (Suresh Prasad Yadav) is part of a design of the State to frustrate the continuing mandamus issued by the High Court in the case of Narendra Mishra (C.W.J.C. No. 8152 of 2013) against the builders of unauthorized construction violating the building bye-laws. According to learned counsel for the Corporation the State functionaries were in connivance with the builders and trying to shield them.

14. Learned counsel for the Corporation finally submitted that there was no difficulty in appearance of Sri Kuldip Narayan before the High Court on 19.12.2014 in C.W.J.C. No. 20570 of 2012 (Suresh Prasad Yadav) as Sri Kapil Ashok has already filed an affidavit on 16.12.2013 before the High Court in C.W.J.C. No. 8152 of 2013 (Narendra Mishra) which is on record that he has not taken over charge of the post of Municipal Commissioner, Patna. In this connection, it is further pointed out that in any

event, whoever was the Commissioner on 19.12.2014 would have been present before the High Court on that day in the case of Suresh Prasad Yadav (C.W.J.C. No. 20570 of 2012).

15. Learned counsel for the 41 Ward Councillors of the Corporation submitted that there are two aspects concerning transfer of a Public servant. First relates to his private rights as an individual pertaining to his service career. The other aspect is concerned with the prejudice caused to the public interest irrespective of private interest. In this connection, it is submitted that there was strong unimpeachable evidence to substantiate definite public interest at the time when order dated 08.07.2013 was passed by the High Court in the matter. The materials on record provide vitiating element to protect the transfer of Sri Kuldip Narayan from the Corporation. It is submitted that the Division Bench passed an injunction order protecting transfer of Sri Kuldip Narayan for the purpose of continuity and answerability which is apparent from the subsequent orders dated 03.07.2014, 03.11.2014, 13.11.2014 and 27.11.2014 passed in the case of Narendra Mishra (C.W.J.C. No. 8152 of 2013). It is further submitted that since the functioning of the Government and the process of the Government is

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subject to public scrutiny so as to promote public accountability the restraint order on the transfer was passed by the High Court. It is submitted that the order dated 08.07.2013 has been affirmed by the Supreme Court on 25.11.2013 but the Supreme Court was pleased to permit the State Government to move an application for variation of the order dated 08.07.2013 and if the same is not allowed, the State may file Special Leave Petition.

16. It is further submitted that Sri Kuldip Narayan, Municipal Commissioner has been directed by the High Court to complete the disposal of the Vigilance Cases till 15.01.2015 and in the aforesaid background, though State has express power to place an I.A.S. Officer under suspension, the question, which is being raised for consideration, is whether the Municipal Commissioner an I.A.S. could be suspended on 12.12.2014 in wake of the judicial order protecting his transfer/ removal from the Corporation for the purpose of continuity and answerability in the matter of enforcing the building bye-laws. The power to suspend an employee is within the domain of the employer but in the facts and circumstances of the case the general principle of law of suspension will not be applicable as in the present case removal of the officer from the Corporation was subject to approval of the High

Court and without obtaining leave of the High Court he could not have been suspended as suspension also tantamounts to his removal from the Corporation.

17. Learned counsel next submitted that it is settled law that service dispute cannot be decided in Public Interest Litigation, except for the purpose of writ of *quo warranto*. Reliance in this connection is placed on the judgment of the Supreme Court in the case of **Hari Bansh Lal Vs. Sahodar Prasad Mahto and others (2010) 9 Supreme Court Cases 655** but it is submitted that the principle of law laid down in the case of **Hari Bansh Lal** (supra) is not attracted to the case in hand as the present writ petition is not connected with service dispute for which only the aggrieved party has the locus to initiate legal action. The resolution of the Government dated 12.12.2014 placing Sri Kuldip Narayan under suspension is an incidental matter and the same is amenable to judicial review in the present case itself. By placing Sri Kuldip Narayan under suspension, the State authorities have proceeded to nullify the operation of a judicial order, merit whereof can always be examined in the present Public Interest Litigation as thereby the State authorities have nullified the direction of the High Court not to remove/transfer Sri Narayan from the post of Municipal

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Commissioner, Patna as the High Court entrusted him with the task of effectively implementing the building bye-laws.


18. Learned counsel further submitted that in the case in hand suspension order could not have been insulated from judicial review even if there was no service dispute as the same has been passed to defeat the order of the High Court and the Supreme Court.

19. Learned Principal Additional Advocate General defended the reference of the writ petitions and the Interlocutory Application(s) to the Full Bench and submitted that the reference is made in the light of the Patna High Court Rules Chapter II Rule 11 read with Chapter V Rule 1. In this connection, he pointed out that once the information about the resolution of the Government suspending Sri Kuldip Narayan was given to the Division Bench in the case of Suresh Prasad Yadav (C.W.J.C. No. 20570 of 2012) on 15.12.2014 in the forenoon and the Bench observed that validity of the suspension order cannot be looked into in Public Interest Litigation as also made arrangement for the Executive Head of the Corporation in the interregnum, permitting Sri Kapil Ashok to appear, file affidavit in the matter on 19.12.2014 the Coordinate Bench on the same day in the afternoon while dealing with another Public Interest



Litigation ought not to have passed interim order staying resolution suspending Sri Narayan, which is in teeth of the observation made by the Division Bench in the forenoon. In case, the Coordinate Division Bench in the afternoon did not agree with the view taken by the earlier Division Bench in the forenoon on the same day it ought to have referred the matter to Hon'ble the Chief Justice for constituting a Larger Bench but in no case should have passed interim order staying the resolution suspending Sri Narayan and continued the same on 16.12.2014 until disposal of I.A. No. 9327 of 2014 filed by Sri Narayan on which orders were reserved on the same day. According to Principal Additional Advocate General, the only course open to the subsequent Division Bench was to fall in line with the observations made by the earlier Division Bench or to refer the matter to a Larger Bench. In no case, the Coordinate Bench should have granted ad interim stay of the resolution suspending Sri Narayan. It is further submitted that as the two different Division Benches made/ passed contrary observations/ directions the State had no option but to request the earlier Division Bench on 17.12.2014 to make a reference to the Chief Justice for resolving the conflict between the two orders of the different Division Bench and Hon'ble the Chief Justice exercising the power

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under the Patna High Court Rules referred to above rightly referred not only the two writ petitions but also the connected matters to the Full Bench. In this connection, he relied on the judgment of the Supreme Court in the case of **State of Rajasthan Vs. Prakash Chand and others (1998) 1 Supreme Court Cases 1 Paragraphs 9, 10, 17, 20, 21, 22, 59(6), Asstt. Collector of Estate Duty, Madras Vs. V. Devaki Ammal (Smt.), Madras 1995 Supp (2) Supreme Court Cases 39 Paragraph 3, K.S. Panduranga Vs. State of Karnataka (2013) 3 Supreme Court Cases 721 Paragraphs 21, 22, Ashok Kumar Pandey Vs. State of W.B. (2004) 3 Supreme Court Cases 349 Paragraph 16, Hari Bansh Lal Vs. Sahodar Prasad Mahto and others (2010) 9 Supreme Court Cases 655 Paragraphs 11 to 15 and Ayaubkhan Noorkhan Pathan Vs. State of Maharashtra and others 2012 AIR SCW 6177 Paragraph 13.**

20. Learned Principal Additional Advocate General next referred to the different orders passed in the case of Suresh Prasad Yadav i.e. order nos. 13, 16, 22, 23 dated 21.08.2013, 04.10.2013, 19.12.2013, 08.01.2014 and submitted that perusal of the aforesaid orders would indicate that the earlier Division Bench was not satisfied


with the conduct of Sri Kuldip Narayan, Municipal Commissioner in execution of the Project concerning Solid Waste Management Scheme and had made observations against his conduct. The Government having considered the conduct of Sri Narayan, Municipal Commissioner in execution of the Solid Waste Management Project as also other matters, namely, encroachment and illegal construction within the municipal limits of Patna as also his failure to spend the amount allotted to the Corporation during financial year 2012-13, 2013-14 restraining development and hygiene to suffer within the municipal limits of Patna, being not satisfied with the cause shown by Sri Kuldip Narayan resolved to place him under suspension vide resolution dated 12.12.2014 in contemplation of the departmental enquiry proceedings and thereafter sought permission from the High Court on 15.12.2014 to post another officer as Municipal Commissioner, Patna after modifying the order dated 08.07.2013 by filing I.A. No. 9357, 9359 both of 2014 and submission made on behalf of the petitioners, Corporation and Sri Kuldip Narayan that the suspension of Sri Narayan, Municipal Commissioner is without seeking permission of the High Court is wholly misconceived. In this connection, he also pointed out that the restraint on the Government was not to transfer Sri





Narayan without seeking permission from the Court. For the present, he has been placed under suspension and applications have been filed seeking permission of the High Court to post another officer in his place, as such, the Government has not violated the orders of the High Court. Learned Principal Additional Advocate General also submitted that Sri Narayan being an I.A.S. Officer of Bihar Cadre, notwithstanding his posting as Municipal Commissioner, remained under over all control of the State Government being Cadre Controlling Authority, as such, by virtue of powers contained in sub-section (7) of Section 36 of the Act, the Government has jurisdiction to place him under suspension even without withdrawing his services from the Corporation.

21(i). Having noted the submission made by the Principal Additional Advocate General, it is meet and proper to deal with the case law relied upon by him. In the case of **State of Rajasthan Vs. Prakash Chand** (supra) Supreme Court dealt with the judicial propriety, validity and justification for making insinuations against the Chief Justice of the High Court, casting aspersions on the learned Judges constituting the Division Bench and making comments, allegations against some of the former Chief Justices of that Court including the then Chief Justice of



India Sri J.S. Verma, behind their back, that too on half baked facts and to insinuate them that they had illegally drawn daily allowances at the full rate of Rs. 250/- per day, to which they were not entitled and thereby committed criminal misappropriation of public funds in connection with disposed of writ petition while dealing with unconnected criminal revision the Supreme Court framed questions in Paragraph 6 of its judgment and answered in Paragraphs 22, 23 in view of the facts noted in Paragraph 25 of the judgment that Judges were not free to choose their jurisdiction or assume jurisdiction in a case pending in the High Court unless the case is allotted to him or them by the Chief Justice. Strict compliance of this procedure is essential for maintaining judicial discipline and proper functioning of the Court. If every Judge of a High Court starts picking and choosing cases for disposal by him, the discipline in the High Court would be casualty and administration of justice would suffer. No legal system can permit machinery of the Court to collapse. Paragraph 25 of the judgment is quoted hereinbelow for ready reference :

*"25. As earlier noticed, on 11-9-1997 a separate board was prepared for Shethna, J. under directions of the Chief Justice in view of the order made by Shethna, J. on 8-9-1997 and part-heard criminal revision petitions and writ petitions were placed before*



*his Lordship. Since Writ Petition No. 2949 of 1996 had not been put up along with the other part-heard cases, Shethna, J., as it appears from the impugned order, sent for Mr Madani (the dealing officer from the Registry) to explain as to why that writ petition had not been placed before him. Mr Madani informed him, as is noticed in the impugned order, that since the writ petition had already been disposed of it was not listed before him. The learned Judge directed Mr Madani to produce the original record of that writ petition which was produced before him on 12-9-1997, on which date the learned Judge directed that the papers of (SB Civil WP No. 2949 of 1996) "be kept with this case" (criminal revision petition) even though there was no connection or relevance between the two cases. In our considered opinion Shethna, J. did not have any authority, statutory or otherwise — nor was it necessary — to call for the record of the above writ petition: firstly because it stood already disposed of by a Division Bench and secondly because it was totally unrelated to and unconnected with the criminal revision petition he was to hear. Therefore, it appears that the record was sent for not for mere perusal but for some other purpose, not strictly judicial. This becomes quite obvious from the fact that while stating "brief reasons for not placing Writ Petition No. 2949 of 1996" before him, Shethna, J. observed:*

*"If the writ petition had really*


*become infructuous then the same statement could have been made before this Court when this Court treated the matter as part heard and this Court would have also passed the same order provided it had really become infructuous. The most interesting part of it is that the matter was disposed of by Division Bench without the second set and only on one set the Division Bench passed the order."*

*The aforesaid observations cast uncalled for aspersions not only against the learned counsel for the writ petitioner who had made the statement before the Division Bench but also against the learned Judges constituting the Division Bench. To say the least it was improper on the part of the learned Judge to have cast aspersions on the conduct of the counsel and the Bench in relation to a disposed of matter in a wholly unconnected judicial proceedings. In doing so he transgressed all bounds of judicial propriety and discipline. "*

The fact situation, however, in the present case, is wholly different. In the special facts and different orders passed in the case of Narendra Mishra (C.W.J.C. No. 8152 of 2013), it may not be appropriate to place reliance on the judgment in the case of **State of Rajasthan Vs. Prakash Chand** (supra) to support the present reference.


(ii) Learned Principal Additional Advocate General next relied on the judgment of the Supreme Court in the case of **Asstt. Collector of Estate Duty, Madras**





(supra) where the Supreme Court was at a loss to understand how once one Division Bench of a High Court held a particular provision of law to be constitutional and not violative of Article 14, another Division Bench could hold the same provision of law unconstitutional and violative of Article 14. Judicial discipline demanded that one Division Bench of the High Court should ordinarily follow the judgment of another Division Bench of that High Court. In extraordinary cases where the latter Division Bench finds it difficult for stated reasons to follow the earlier Division Bench judgment the proper course is to order that the papers be laid before Hon'ble the Chief Justice of the High Court for constituting a Larger Bench. Certainly where one Division Bench has held a statutory provision to be constitutional it is not open for another Division Bench to hold otherwise. For the aforesaid proposition, he also relied on the judgment of the Supreme Court in the case of **K.S. Panduranga** (supra).

22. In the instant case aforesaid well settled proposition of law is perhaps not applicable as the former Division Bench while passing order dated 15.12.2014 in the forenoon in the Public Interest Litigation of Suresh Prasad Yadav had made observation that the suspension matter cannot be entertained in Public Interest Litigation




and in that light approved the arrangement asking Sri Kapil Ashok to head the Corporation in the interregnum. Latter Division Bench on the same day, in the afternoon, taking note of the fact that Sri Narayan has been suspended under resolution dated 12.12.2014 without seeking leave from the Court which amounted to defeating the entrustment made to Sri Narayan by the High Court under orders dated 02, 08.07.2013 to effectively implement the building bye-laws within the municipal limit of Patna granted interim stay of the resolution suspending him and continued the stay until disposal of the Interlocutory Application with a view to restore the entrustment made to Sri Kuldip Narayan to enforce the building bye-laws under order passed by the High Court, Supreme Court over the arbitrary action on the part of the Executives of the State not to enforce the same leading to mushroom growth in the number of high rise apartments violating the building bye-laws.

23. Learned Principal Additional Advocate General next relied on the judgment of the Supreme Court in the case of **Ashok Kumar Pandey** (supra) and submitted that Supreme Court held long ago that in service matters Public Interest Litigations should not be entertained. The inflow of so called Public Interest

Litigations involving service matter continue unabated in Court and strangely are entertained. The least the High Court could do is to throw them out on the basis of the said decision. For the aforesaid proposition, learned counsel also relied on the judgment of the Supreme Court in the case of **Hari Bansh Lal** (supra) and **Ayaaubkhan Noorkhan Pathan** (supra). Reliance placed by Principal Additional Advocate General on the aforesaid three decisions of the Supreme Court to buttress the submission that by entertaining the Interlocutory Application filed by Sri Narayan High Court has entertained Public Interest Litigation in service matter appears to be wholly misconceived in view of the fact that suspension of Sri Narayan has been effected by the Government under resolution dated 12.12.2014 with a view to defeat the entrustment made to him by the High Court in larger public interest to implement the building bye-laws and to stop raising of the multi-storey apartments contrary to the provisions of the building bye-laws on roads, lanes, which are of less than 20 ft. width. The Division Bench in the case of Narendra Mishra (C.W.J.C. No. 8152 of 2013) in the afternoon on 15.12.2014 granted interim stay of suspension of Sri Narayan to uphold the entrustment made to him under judicial orders passed by the High Court,


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Supreme Court dated 02, 08.07.2013, 25.11.2013 referred to above, as such, the contention that by entertaining the suspension matter of Sri Narayan High Court is entertaining Public Interest Litigation filed on his behalf, is wholly misconceived as by entertaining the Interlocutory Application filed by Sri Narayan High Court is only upholding its earlier orders passed by it on 02, 08.07.2013 duly approved by the Supreme Court under order dated 25.11.2013. Heaven would not have fallen if the Government had sought permission from the High Court before proceeding to suspend Sri Narayan.


24. Before proceeding to consider the rival submission, it is necessary to notice the clarification given by the counsel for the petitioners, Corporation and its Commissioner in response to the submission of the counsel for the State. Learned counsel for the petitioner in the case of Narendra Mishra (C.W.J.C. No. 8152 of 2013) as also other petitioners including the counsel for the Corporation and its Commissioner submitted that copy of the petition filed by the State on 15.12.2014 bearing I.A. Nos. 9357, 9359 both of 2014 seeking permission of the High Court to post another officer as Municipal Commissioner of the Corporation was not served on them and they came to learn about the two petitions only during submission made

by the Principal Additional Advocate General.




25. Counsel for the Corporation and its Commissioner further clarified with reference to the different orders of the High Court passed in the case of Suresh Prasad Yadav (C.W.J.C. No. 20570 of 2012) bearing order nos. 13, 16, 22, 23 dated 21.08.2013, 04.10.2013, 19.12.2013, 08.01.2014 that the Municipal Commissioner cannot be held responsible for the delay and the lackadaisical attitude of the Government in executing the Solid Waste Management Project, as from perusal of the order dated 25.09.2014 passed in the said case itself, it will appear that it was the Chief Secretary and the other functionaries of the State who were responsible for the delay and the grounds taken to place the Municipal Commissioner under suspension is wholly misconceived and indicative of the fact that Sri Kuldip Narayan, Municipal Commissioner has been suspended with a view to defeat the public interest as he was executing the building bye-laws to the detriment of the builders' lobby affecting their illegal income.

26. Having considered the rival submissions in the background of the facts of the writ petitions and the Interlocutory Applications, it is quite evident that the High Court under order dated 02.07.2013, passed in the case of




Narendra Mishra (C.W.J.C. No. 8152 of 2013), noticed the mushroom growth in the construction of multi-storey apartment(s) in the town of Patna violating the building bye-laws and directed the Municipal Commissioner to take action against 449 apartments already identified with further direction to the Municipal Commissioner to finalize the case of 771 persons to whom notice has already been issued seeking details of the constructions raised by them to find out if they had violated the building bye-laws, if yes, to take action against them as well. For ensuring effective implementation of the building bye-laws and compliance of the order dated 02.07.2013 the High Court observed under order dated 08.07.2013 in the same case that frequent transfer of Municipal Commissioner is causing hindrance in enforcement of building bye-laws and placing reliance on the observations made by the High Court under order dated 13.01.2000, passed in the case of **Arun Kumar Mukherjee** (supra), directed that the present Municipal Commissioner Sri Kuldip Narayan shall not be transferred without its permission for the purpose of continuity and answerability in the matter of enforcement of the building bye-laws. Aforesaid order dated 08.07.2013 was assailed by the State Government before the Supreme Court by filing Special Leave to Appeal, which was



disposed of under order dated 25.11.2013 refusing to interfere with the order dated 08.07.2013 observing that as the State has not yet applied for permission before the High Court to transfer the Municipal Commissioner with further observation that in case, the State applies before the High Court for permission and the same is rejected, it will be open for the State to move the Supreme Court under Article 136 of the Constitution. In the light of the aforesaid judicial orders entrustment made to Sri Narayan for effective implementation of the building bye-laws in the case of Narendra Mishra (C.W.J.C. No. 8152 of 2013) continued within the municipal limits of Patna and the said fact would appear from perusal of the subsequent orders passed in the case of Narendra Mishra i.e. dated 03.07.2014, 03.11.2014, 13.11.2014 and 27.11.2014.

27. Sri Narayan was suspended on Friday 12.12.2014 and the said fact was informed to the Division Bench which dealt with Narendra Mishra case in the afternoon on the same day whereafter the Bench directed the State counsel to seek instruction in the matter with further direction that the case of Narendra Mishra (C.W.J.C. No. 8152 of 2013) be listed before the Bench in the afternoon of Monday i.e. 15.12.2014 and in the case of Narendra Mishra passed interim order dated 15.12.2014 in



the afternoon staying resolution dated 12.12.2014 placing Sri Narayan under suspension as the Bench was of the view that by placing Sri Narayan under suspension without seeking leave from the High Court the Government has prevented Sri Nayayan from effectively implementing the building bye-laws within the municipal limits of Patna, a job entrusted to him by the High Court under judicial order dated 08.07.2013 without seeking leave of the High Court as was directed under order dated 08.07.2013 by the High Court duly approved by the Supreme Court under order dated 25.11.2013.

28. During suspension relationship of master and servant continues between the employer and the employee but the employee is forbidden to perform his official duties. In the instant case, Sri Narayan has been placed under suspension with a view to restrain him from implementing the building bye-laws and thereby the Government having placed Sri Narayan under suspension without seeking leave from the High Court has violated the orders of not only the High Court but also of the Supreme Court whereunder the order of the High Court was approved. In this connection, reference may be made to the judgment of the Supreme Court in the case of **Union of India and Anr. Vs. Ashok Kumar Aggarwal**

**2013(14) SCALE (Civil Appeal No. 9454 of 2013 disposed of under order dated 22.11.2013).**

29. Now, I proceed to consider the validity of the reference order dated 17.12.2014. According to learned counsel for the State there is conflict in the two orders dated 15.12.2014 passed by two different Benches of the High Court. One in the forenoon and another in the afternoon. According to counsel for the State the Bench passing the order in the forenoon observed in the case of Suresh Prasad Yadav (C.W.J.C. No. 20570 of 2012) that the validity of the suspension order of Sri Narayan cannot be assailed in a Public Interest Litigation and then went on to approve the arrangement made for the interregnum permitting Sri Kapil Ashok to affirm affidavit on behalf of the Corporation and appear before it on 19.12.2014, in the afternoon on the same day another Coordinate Bench in the case of Narendra Mishra (C.W.J.C. No. 8152 of 2013) proceeded to grant interim stay of resolution placing Sri Narayan under suspension and to resolve the conflict between the two orders of the two different Coordinate Benches State had no option but to request the former Division Bench to make a reference of both the writ petitions and the connected Interlocutory Applications to a Full Bench. Aforesaid submission is wholly misconceived in



view of the fact that the Bench dealing with the case of Suresh Prasad Yadav (C.W.J.C. No. 20570 of 2012) in the forenoon of 15.12.2014 was not informed that Sri Narayan was entrusted with the task of effective implementation of the building bye-laws within the municipal limits of Patna by the High Court under orders dated 02, 08.07.2013 and that his transfer/ removal from the Corporation is to be made after obtaining permission from the High Court and that suspension tantamounts to removing/ preventing the officer from discharging the task entrusted to him by the High Court. Had the aforesaid facts been informed to the Bench on 15.12.2014 in the forenoon in the case of Suresh Prasad Yadav (C.W.J.C. No. 20570 of 2012) there would not have been any occasion for the Bench to have observed in the said case that the suspension of an officer cannot be assailed in Public Interest Litigation. Reference of Narendra Mishra case (C.W.J.C. No. 8152 of 2013) and the different Interlocutory Applications filed in the said case including I.A No. 9327 of 2014 filed by Sri Narayan to the Full Bench is contrary to the provisions of Rules 10, 10-A of the Patna High Court Rules which put an express bar on the powers of Hon'ble the Chief Justice to do anything with regard to the pending matters before a Bench. Reference in this connection, may be made to the

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judgment of the High Court in the case of **An Advocate Vs. The Registrar, Patna High Court** (supra), Supreme Court in the case of **High Court of Judicature at Patna Vs. Ramawatar Singh** (supra).

30. Writ petition of Narendra Mishra (C.W.J.C. No. 8152 of 2013) being pending before the Division Bench and the Interlocutory Application filed by Sri Narayan having been heard and final orders reserved ought not to have been referred to the Full Bench. In case, State was aggrieved by the interim order dated 15.12.2014 passed in the afternoon on the Interlocutory Application filed by Sri Narayan in the case of Narendra Mishra (C.W.J.C. No. 8152 of 2013) and extended under order dated 16.12.2014 until disposal of the said Interlocutory Application, it would have been well advised to move the Supreme Court against the two interim orders and not to request another Division Bench dealing with the case of Suresh Prasad Yadav (C.W.J.C. No. 20570 of 2012) to refer the matter to a Larger Bench on the ground that another Coordinate Bench in the case of Narendra Mishra (C.W.J.C. No. 8152 of 2013) has entertained the Interlocutory Application filed by Sri Narayan granting interim stay of resolution placing him under suspension under order dated 15.12.2014 passed in the afternoon,



which is in teeth of the observation made in the case of Suresh Prasad Yadav in the forenoon of 15.12.2014 and to arrest the conflict, it is necessary to refer the case of Suresh Prasad Yadav (C.W.J.C. No. 20570 of 2012), Narendra Mishra (C.W.J.C. No. 8152 of 2013), Interlocutory Applications filed in both the writ cases including I.A. No. 9327 of 2014 filed by Sri Narayan to the Full Bench. In this connection, it may be pointed out that the Full Bench is constituted to settle a point of law and not to set aside the interim order as the same would amount to sitting in appeal over the interim order passed by the Division Bench, which is not permissible in the eye of law. The overriding power of Hon'ble the Chief Justice contained in Rule 11 of the Patna High Court Rules to direct any application, petition, suit, appeal or reference to be heard by a Full Bench is with respect to those matters which have not yet been assigned to any Judge or Bench. Hon'ble the Chief Justice being the first amongst the equals has administrative power to fix the roster and to change the same from time to time. Having assigned any case or application to a Judge or a Bench the same has to be considered in the same roster and can be referred to the Full Bench or any other Bench or Judge dealing with the said roster, the case or the application cannot be taken





out from the roster and assigned to another Bench or Judge without the consent of the Judge or Bench dealing with the roster. In this connection, I may also usefully refer to the judgment of the Supreme Court in the case of **Binoy Bhushan Sahay Vs. State of Bihar (Criminal Appeal No. 180 of 1966) decided on 29.09.1966 reported in Supreme Court Judgments Volume 4 September 1966 page 234D to 234E** whereunder a three Judge Bench of the Supreme Court has observed that it is for the Court hearing a proceeding to arrange its roster of cases for hearing the cases before it and no one has a right to claim that it should be disturbed. It is, therefore, held that while referring the case of Suresh Prasad Yadav to the Full Bench the case of Narendra Mishra (C.W.J.C. No. 8152 of 2013) and other connected matters ought not to have been referred to the Full Bench as there is neither any conflict between the two orders dated 15.12.2014 passed by two different Division Benches, one in the forenoon and another in the afternoon in the case of Suresh Prasad Yadav and Narendra Mishra respectively nor there is any special circumstance like the one in the case of **State of Rajasthan Vs. Prakash Chand** (supra) which could persuade Hon'ble the Chief Justice to refer the matters to the Full Bench.

31. In view of facts and circumstances stated above and the findings recorded in Paragraphs 21 to 23 and 26 to 30, I have no option but to refer back the writ petition of Narendra Mishra (C.W.J.C. No. 8152 of 2013), Interlocutory Applications filed in the said writ case including I.A. No. 9327 of 2014 filed by Sri Narayan as also other connected writ petitions to be dealt with by the Bench which passed interim order dated 15, 16.12.2014 in I.A. No. 9327 of 2014 filed by Sri Narayan and reserved its orders. There being no point of law involved in the writ petition filed by Suresh Prasad Yadav (C.W.J.C. No. 20570 of 2012) the same be dealt with by the Bench which dealt with the said writ case earlier in accordance with law.

**(V.N. Sinha, J.)**

**Rajesh/-**

**(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)**

Having perused the conflicting opinions expressed by my two learned senior colleagues, both of whom I hold in great esteem, I fully and entirely agree with the views as expressed by Justice I. A. Ansari. I am unable to persuade myself to accept the views of Justice V. N. Sinha, who has rightfully not chosen to dissent with the entire views of Justice I. A. Ansari. While doing

so, I would like to add a post script.

**2.** No one has challenged the legal proposition that in a PIL (public interest litigation and not personal or private interest litigation), pure service matter cannot be raised, except to a certain extent in *quo warranto* proceedings of PIL in nature. Service matters are outside the scope of PIL proceedings. Then, if suspension be a service matter, it cannot be impugned in a PIL. In *quo warranto*, no one challenges suspension but challenges appointment/holding of public office. If these be the positions, when no final order warranting quashment of suspension can be passed in a PIL, then, can any stay application be at all entertained? Answers must be in the negative. It would have been entirely a different fact situation, if Sri Kuldeep Narayan had merely brought the order of suspension to the notice of the Court in the second PIL and pointed out that because of the suspension order, he is unable to comply with the earlier orders of the Court and, then, leaving it to the Court to decide as to what steps are to be taken, which could, in appropriate case, be in the contempt jurisdiction but after due notice in this regard. But that was not to be; rather, he invited, in a PIL, the Court to adjudicate upon the merits of suspension order including



*mala fide* on the part of the Government. This surely is beyond the ambit of PIL. He was not remediless.

**3.** I. A. NO. 9094 of 2014, in CWJC No. 8152 of 2013, is a classic example of abuse of PIL jurisdiction, where challenge to a criminal vigilance case is made, not by an officer proceeded against, but by his son. It is entertained with orders of no coercive action. Taking que from it, Sri Kuldip Narayan challenges his suspension, which is stayed.

**4.** Let us not permit the PIL jurisdiction to be degenerated and abused in this manner.

**5.** I would say no more on this aspect as Justice I.A. Ansari has dealt with this in great details.

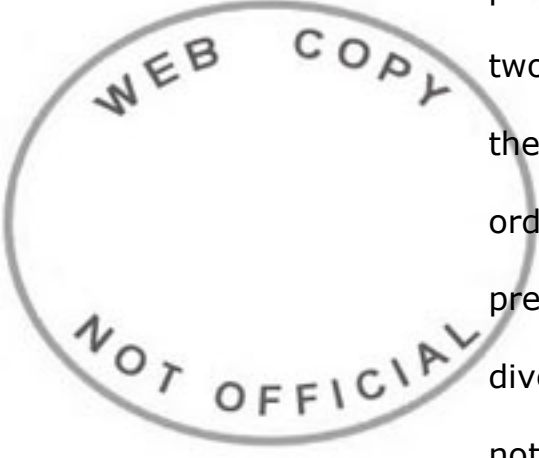
**6.** Justice V. N. Sinha has elaborately dealt with the jurisdiction of the Chief Justice to refer cases to Full Bench, taking a view that the present case was not a case, in which he could exercise such jurisdiction. All I can say is first as the Apex Court has repeatedly held and the judgments have been noticed by Justice I.A. Ansari, the Chief Justice is the Master of Rosters. As pointed out by the Apex Court in the case of **Prakash Chand** (supra), wherein it was held that it is a complete fallacy to assume that a part-heard case can, under no circumstances, be withdrawn from the Bench and



referred to a larger Bench. This position, in my view, negates the aforesaid views of Justice V. N. Sinha.

**7.** Again in the case of **Assistant Collector of Estate Duty** (supra), the Apex Court clearly held that subsequent Division Bench must follow the judgment of earlier Division Bench of that High Court. In extra ordinary cases, where the latter Division Bench finds difficulty for stated reasons to follow the earlier Division Bench judgment, the proper course is to order that papers be placed before the learned Chief Justice of the High Court for constituting a larger Bench. Without going into the facts, which have already been narrated in the two opinions, clearly there was a divergence of proceedings. In the first PIL it was clearly observed that the suspension order of Shri Kuldip Narayan could not be made subject matter of challenge in PIL, whereas, for some reason, in the second PIL, it was thought that interference with the said suspension matter in PIL was possible. If this is not a conflict, I fail to see what is a conflict. The Apex Court clearly said that in such a situation, the second Division Bench, instead of proceeding with the matter, granting stay and then intending to deal with it on merits, should place the matter before the Chief Justice for being referred to the





larger Bench. This is not only a principle of judicial propriety, but of good judicial administration. If these two conflicting orders are seen by the public, what will they say about the Court. They have to follow the Court orders. They have to understand the same. The predicament of the State is clear. Divergent views and divergent approaches in respect of the same matter are not conducive and this is why there is necessity to refer the matter to a larger Bench to arrest the divergence and get the unanimity.

**8.** The effect of divergent views writ large. The first Division Bench holds that during suspension, Shri Kapil Ashok would function; whereas the second Division Bench stays the suspension of Shri Kuldip Narayan effectively nullifying thereby the order of the first Division Bench, giving also chance to Shri Kuldip Narayan to enjoy stay, may be wrongly, to plead further that the departmental proceeding, having not commenced within 45 days, the suspension stands revoked.

**9.** Moreover, the Patna High Court Rules, as in detail discussed and quoted by Justice I.A. Ansari, is not alone, dealing with the conflicting orders. As pointed out, they are in three parts. First Chapter II of the Patna



High Court Rules and, in particular, Rule 11 thereof, gives an over-riding independent discretionary power to the Chief Justice to direct any petition to be heard by a Full Bench. There may be no conflict of orders or otherwise. This is one independent source. Then Chapter V, Rule 1 thereof, is in two parts. First- where the Division Bench itself seeks a reference, it would be upon the Chief Justice to consent. Second- where there is difference between the two Division Benches, in which case consent of the Chief Justice is not required. These are three independent powers under which a matter may be referred by the Chief Justice to a Full Bench.

**10.** Thus, I am unable to persuade myself to agree with Justice V. N. Sinha that in the present case no reference could be made to the larger Bench and I agree with the views taken by Justice I. A. Ansari in these regards.

**11.** To conclude all I can say is that the dignity of the institution is above the predilection of individuals constituting the Court and it is for this reason that the principle of etiquettes has been evolved, one of them the Chief Justice, being the Master of Rosters, has over-riding rights in constituting or referring matters to larger Bench because ultimately it would be the

discretion of the Court as to how one would proceed with the matter, which is relevant. I as well agree with the conclusions of Justice I.A. Ansari in all respect.

**(Navaniti Prasad Singh, J.)**



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