

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
PUBLIC INTEREST LITIGATION NO.173 OF 2010
WITH
CIVIL APPLICATION NO.124 OF 2014
IN
PUBLIC INTEREST LITIGATION NO.173 OF 2010
WITH
CIVIL APPLICATION (ST) NO.18174 OF 2016
IN
PUBLIC INTEREST LITIGATION NO.173 OF 2010

Dr.Mahesh Vijay Bedekar ...Petitioner
V/s.
The State of Maharashtra and ors. ...Respondents
-

WITH
CONTEMPT PETITION NO.123 OF 2017

Dr.Taramati S. Pathak. .. Petitioner
Vs
Shri S.Babar, Sr. Inspector of Police and Ors. .. Respondents
-

WITH
CONTEMPT PETITION ST. NO.11339 OF 2017
WITH
CONTEMPT PETITION ST.NO. 35443 OF 2016

Hirali Foundation,
Through its Secretary & Trustee
Mrs.Sarita P.Khanchandani. .. Petitioner
Vs
Smt. Vijaya Kanthe,
Additional Municipal Commissioner & Others. .. Respondents
-

CONTEMPT PETITION ST. NO.22665 OF 2017

Reena Richard	..	Petitioner
Vs		
The State of Maharashtra, Through its Secretary and Others.	..	Respondents
-		

CONTEMPT PETITION ST. NO.24393 OF 2017

Ganpati Chawk Mitra Mandal, Through its Vice President.	..	Petitioner
Vs		
the State of Maharashtra and Others.	..	Respondents
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PIL/173/2010 A/W CAIST/22565/2016 AND CAI/5/2017

Mr. S.M.Gorwadkar, Sr. Counsel I/b Mr. Sanjay H. Gangal for Petr.
 Mr. A.A.Kumbhakoni, A.G. a/w Mr. A.B. Vagyani, G.P. and Mr.Manish Pabale, A.G.P. & Mr.Akshay Shinde and Mr. R.S. Sawant, Asstt. AGP and Ms. G.R. Golatkar, Asstt.AGP for R.Nos. 1(A) to 1(D)
 Dr. Sadhna Mahashabde for R. No. 1(E)
 Mr. D.A.Dube & Mr. Upendra Lokegaonkar for R. No.3
 Mr. A.Y.Sakhare, Sr. Counsel a/w Mr. J.J. Xavier, Mrs. Vidya Gharpure & Mr. Vinod Mahadik for Respondent No.11
 Mr. Abhijit P. Kulkarni for R. No.14
 Mr. Nikhil Chavan for Respondent No. 26
 Mr. R.S.Apte, Sr. Counsel i/b Mr. N.R.Bubna for R.No. 2 & 16
 Mr. Nitin Gangal for Respondent No . 5
 Mr. Pramod G. Kathane for Respondent No. 9 & 17
 Mr. A.S. Rao a/w Mr. Prashant Kamble for R. No.13
 Mr. A.V.Anturkar, Sr. Counsel I/b Ms. Kalyani Tulankar for Intervener
 Mr. N.P.Deshpande for M.P.C.B.
 Ms. Priyanka Varavdekar for Amravati and Nagpur Municipal Corporation

CP/123/2017

Ms. Sucheta Dattatray Ghaisas for petitioner.

Mr. A.A.Kumbhakoni, A.G. a/w Mr. A.B. Vagyani, G.P. and Mr.Manish Pabale, A.G.P. & Mr. Akshay Shinde and Mr. R.S. Sawant, Asstt. AGP and Ms. G.R. Golatkar, Asstt.AGP for state

CPST/11339/2017

Mr. S.M. Gorwadkar a/w Mrs. Sana Yusuf Baugwala for Petitioner
Mr. A.S. Rao and Mr. Prashant Kamble for R. Nos. 2 & 7

CPST/35443/2016

Mrs. Sana Yusuf Baugwala for petitioner,
Mr. Nikhil Chavan for R. No.1
Mr. Nitin P. Deshpande for R. No.5

-

CPST/22665/2017

Ms. Reena Richard Petitioner in person

Mr. A.A.Kumbhakoni, A.G. a/w Mr. A.B. Vagyani, G.P. and Mr.Manish Pabale, A.G.P. & Mr. Akshay Shinde and Mr. R.S. Sawant, Asstt. AGP and Ms. G.R. Golatkar, Asstt.AGP for RespondentNo.1

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CPST/24393/2017

Mr. Abhijit Tikar for petitioner

Mr. A.A.Kumbhakoni, A.G. a/w Mr. A.B. Vagyani, G.P. and Mr.Manish Pabale, A.G.P. & Mr. Akshay Shinde and Mr. R.S. Sawant, Asstt. AGP and Ms. G.R. Golatkar, Asstt.AGP for RespondentNo.1

WITH
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO.85 OF 2007

Awaaz Foundation and another	..	Petitioners
vs.		
State of Maharashtra and others	..	Respondents
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PUBLIC INTEREST LITIGATION NO.74 OF 2007
WITH
NOTICE OF MOTION NO.118 OF 2010
WITH
PUBLIC INTEREST LITIGATION NO.83 OF 2010

Society for Fast Justice and Anr.	...	Petitioners
V/s.		
The State of Maharashtra & Ors.	...	Respondents
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WITH
WRIT PETITION NO.2053 OF 2003

Dr. Yeshwant Trimbak Oke & Ors	...	Petitioners.
V/s		
Union of India & Ors.	...	Respondents.
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WITH
WRIT PETITION NO.1503 OF 2005

A. P.Lewis	...	Petitioner
V/s.		
Union of India and Anr.	...	Respondents
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Shri A.A. Kumbhakoni, Senior Counsel along with Ms. Uma Palsule-Desai, AGP for the State.		
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WITH
WRIT PETITION NO.357 OF 2003

H.S.D'Lima

...Petitioner

V/s.

State of Maharashtra & Ors.

...Respondents

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PIL/85/2007

Dr. Birendra Saraf a/w Mr. Rohan Cama & Mr. Shanay Shah, a/w Mr. Ishwar Nankani a/w Ms. Gauri Memon, i/b. Nankani & Associates for Petitioners

Mr. A.A.Kumbhakoni, AG a/w Ms Uma Palsule-Desai, AGP for Respondent no. 1 State

Mr. A.Y.Sakhare, Sr. Counsel a/w Mr. J.J.Xavier, Mr. Vinod Mahadik & Ms. Sharmila Modle for respondent No. 5 BMC

Mr. Upendra Lokegaonkar i/b Mr. N.R.Prajapati for Respondent UOI

Ms. Kiran Bagalia for respondent no. 4

Ms.Sadhna Mahashabde for Respondent No.2

WP/357/2003

Mr. Sagar Rane for petitioner in WP/357/2003

Mr.A.A.Kumbhakoni, AG a/w Ms Uma Palsule-Desai, AGP for Respondent no. 1 State

WP 2053/03

Dr. Birendra Saraf a/w Mr. Rohan Cama & Mr. Shanay Shah a/w Mr. Ishwar Nankani a/w Ms. Gauri Memon, i/b. Nankani & Associates for Petitioners

Mr. Rui Rodrigues for respondent no. 1 UOI

Mr. A.A.Kumbhakoni, AG a/w Ms Uma Palsule-Desai, AGP for Respondent 2 & 3 State

PIL74/07

Mr. A.A.Kumbhakoni, AG a/w Ms Uma Palsule-Desai, AGP for Respondent no. 1 & 5 State

Ms. Sadhna Mahashabde for respondent no. 3

PIL/83/2010

Mr. A.A.Kumbhakoni, AG a/w Mr. L.T.Satelkar, AGP for Respondent No.1 & 6 to 9 State
Mr.D.P.Singha/w.Mr.G.R.Sharma for Respondent Nos.3 & 4
Mr. C.M.Lokesh, for Respondent No.5

WP/1503/2005

Mr. A.A.Kumbhakoni, Sr. Counsel a/w Ms Uma Palsule-Desai,
AGP for the State

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CORAM : A.S.OKA, &
RIYAZ I. CHAGLA, JJ.

DATE : 29TH AUGUST 2017

ORAL ORDER : (PER A.S.OKA, J)

1. With great deal of anguish that we are dictating this order. But the events which have happened are so extraordinary that we have no choice in the larger interests of the Judiciary but to record those extraordinary events.

2. Public Interest Litigation No.173 of 2010 and other connected matters were disposed of by a Division Bench of this Court (A.S.Oka & A.A.Sayed, JJ) by the judgment and order dated 10th, 11th, 12th and 16th August 2016. It is a matter of record and it is an undisputed fact that as per the administrative order passed by the Hon'ble the Chief Justice on 18th November 2016, these disposed of

Petitions were ordered to be placed for considering compliance before a Division Bench of which one of us (A.S. Oka, J) is a member. Several orders were passed after the 18th November 2016 dealing with the issue of implementation of the directions issued by this Court. As recorded in the order dated 24th August 2017, the final decision in the matters was substantially challenged by the State Government by way of a Special Leave Petition before the Apex Court. The challenge failed and as of today, the decision has become final.

3. On 22nd August 2017, these Petitions were listed before this Bench for considering compliance of various directions. On that date, an affidavit was filed by the State Government of Smt. Archana Shirke, Under Secretary of the Environment Department placing on record a copy of the Notification dated 10th August 2017. On the basis of the said Notification, a contention was raised by the learned Advocate General that the declaration granted in terms of Clause (xii) of Paragraph 93 of the final judgment has become inoperative as there is an amendment to the Noise Pollution (Regulation and Control) Rules, 2000. On 22nd August 2017, the submissions were heard for considerably long time. We had heard the learned counsel representing various parties as well as the learned Advocate General. Though the submissions were substantially heard, the same were not concluded. That is how the matters were ordered to be listed at 11.00 a.m on 23rd

August 2017. What transpired on 23rd August 2017 in this Court is noted in detail in Paragraph 4 of our earlier order dated 24th August 2017. Relevant part of the said paragraph reads thus:-

“4. ...As submissions were not concluded, the matters were kept yesterday at 11.00 a.m. **When the matters were called out yesterday at 11.00 am, this Bench made the learned Advocate General aware of the prima facie view formed by this Court after hearing the arguments at length on 22nd August 2017. Only object of pointing out prima facie view before the submissions were to be concluded was to give an opportunity to the learned Advocate General firstly to seek instructions from the State Government and secondly to address the Court on the prima facie view expressed by this Court. There is a consistent practice followed by this Court to express prima facie view so that best is brought out of the members of the Bar. Prima facie view expressed by this Court was that on the basis of the amendment brought about by the notification dated 10th August 2017, the directions issued by this Court as regards silence zone cannot be held to be inoperative and in any event, the State Government will have to make an application for review or modification of the final Judgment.** This Court also expressed a prima facie view that since what is held in clause (xii) of paragraph 93 reproduced above was not based only on clause 3 of the Schedule which has been deleted by the amendment, in absence of any application for modification, the oral plea of the learned Advocate General cannot be considered. **This Court also expressed a prima facie view that if the submissions of the learned Advocate General are correct, a part of the Judgment will have to be modified which has to be done by the same Bench which has passed the final Judgment and Order as per Chapter XXX of the Bombay High Court Rules and the corresponding provisions of the Original Side Rules. This Court has made it very clear to the learned Advocate General that this Court was willing to hear him further on his contention and the prima facie view expressed was subject to his further submissions. However, he sought time to take instructions. Thereafter, we**

kept back the matters till 1.00 p.m. The matters were taken at 1.10 p.m., when the learned Advocate General stated before the Court what were his instructions. He stated that the State Government was willing to make an application for review. His submission was that till the said application is filed and considered, the State Government will proceed on the basis of the statements made by Smt. Shirke that no silence zone is in existence as per the amended Noise Pollution Rules. However, he stated that in case of city of Mumbai where earlier declarations by the Mumbai Municipal Corporation of silence zones have been made, the silence zones will be taken up as guide lines. Therefore, he continued further submissions till 2.00 p.m. The submissions could have been over yesterday itself and we would have decided the issue yesterday itself. However, on the request made by the learned Advocate General on the ground that he was required to appear before the Full Bench headed by the Hon'ble the Chief Justice, we thought it fit to accommodate him. Therefore, we kept the matter today for hearing the further submissions of the learned Advocate General. If we would not have expressed our prima facie view, the matter would have been over yesterday in the first session of yesterday itself."

(emphasis added)

4. There is one more event which is required to be noted. On 23rd August 2017, there was an administrative order passed by the Hon'ble the Chief Justice by which Public Interest Litigation St. No.24110 of 2017 was assigned to this Bench for hearing it along with the connected disposed of matters. The challenge in the PIL was to the Notification dated 10th August 2017 issued by the Central Government. We have already noted what transpired upto 2.00 p.m on 23rd August 2017.

5. The extraordinary events started thereafter. When the matters were called out on 24th August 2017 at 11.00 a.m., the learned Advocate General tendered a copy of a praecipe dated 24th August 2017 (described in the order dated 24th August 2017 as a letter”) addressed to Hon'ble Chief Justice which is on record and for convenience, we are today marking the same as “P1” for identification. Though the learned Advocate General stated that the praecipe was filed, he did not state on 24th August 2017 before this Bench that he had personally handed over the same to the Hon'ble Chief Justice in her chamber before 11 a.m. on that day. Yesterday, on a query made by the Court, he informed the Court that the praecipe was personally handed over by him to the Hon'ble Chief Justice by meeting her in Chamber before 11 a.m on 24th August 2017. It is not the case of the State that a notice was given to rival parties of the fact that the Learned Advocate General was to move the Hon'ble Chief Justice before the Court hours in her Chamber. In the said praecipe, there were serious allegations of bias made against one of us (A.S.Oka,J). The allegations of bias as can be seen from the Paragraphs 9 and 10 of the said praecipe were made based on the prima facie view expressed by this Bench on 23rd August 2017 at 11.00 a.m only for the sake of transparency and only to enable the learned Advocate General and other counsel representing the parties to assist the Court properly. We have already noted in our earlier order dated

24th August 2017 that this Court followed the tradition of expressing prima facie view only with a view to get proper assistance from the members of the Bar. In Paragraph 9 of the praecipe, it is stated thus:-

“9. With utmost respect and with utmost regard towards Hon'ble Shri Justice A.S.Oka (hereinafter for the sake of brevity referred to as the Hon'ble Judge), it is humbly submitted that during the course of hearing the Hon'ble Judge has expressed such views which clearly demonstrate that the Hon'ble Judge is biased in subject matter of these petitions.”

6. In Paragraph 12 of the said praecipe dated 24th August 2017, there were allegations of bias against one of us (A.S.Oka,J) of harbouring a serious bias in the subject matter of these Petitions against the State machinery. Paragraph 12 of the said praecipe reads thus:-

“12. These and such other aspects of the matter in general demonstrate that the Hon'ble Judge is somehow harbouring a serious bias in the subject matter of these petitions against the State Machinery in this matter.”

7. The further part of the order dated 24th August 2017 is self-explanatory as to what transpired after a copy of the praecipe was tendered by the learned Advocate General. Paragraphs 5 to 9 of the said order read thus:-

“5. Yesterday, the Hon'ble the Chief Justice passed an Administrative Order assigning the PIL St.No.24110 of 2017 wherein the challenge is to the notification dated 10th August 2017. Today, when the matters were called out, the learned Advocate General has placed on record a letter dated 24th August 2017 signed by Shri Manish M. Pabale, AGP addressed to the Hon'ble the Chief Justice. The letter records that it was drafted on the instructions of Shri Vijay Patil, Deputy Secretary of the Home Department, Mantralaya. In the said letter, it is stated that one of the two Judges of this Bench (A.S.Oka,J.) is harbouring a serious bias in the subject matter against the State Machinery. Therefore, a prayer is made in the said letter to club all the connected matters. The learned Advocate General stated that when the said letter was submitted, the State was not aware of the order passed by the Hon'ble the Chief Justice of assigning the PIL St.No.24110 of 2017 to this Bench. However, he states that prayer in the application is for transfer of matters on Board and all connected matters. The learned counsel for the Union of India in PIL St.No.24110 of 2017 was at pains to point out that a matter involving similar challenge is adjourned by four weeks by another Bench.

6. We are shocked to record all this. As stated earlier, we followed the tradition of expressing prima facie view to the learned counsels representing the parties only with a view to get proper assistance from them. After the matters were adjourned yesterday with a view to accommodate the learned Advocate General, the State has filed the letter dated 24th August 2017 making serious allegations of bias against one of us (A.S.Oka,J). We are not saying this to blame the learned Advocate General. But we are saying this for a different reason. The State should have respect for the highest Office of the learned Advocate General who is the constitutional functionary. Suffice it to say that by this conduct on the part of the State Government, they have made the position of the learned Advocate General most awkward. The Advocate General is

the leader of the Bar who is the Officer of the Court first. We are sorry to record that the State Government has not bothered to even consider the effect of such a prayer made today when the matters were adjourned yesterday to accommodate the learned Advocate General.

7. **The law as regards recusal is well settled and we may not restate it again. There is no question of recusing ourselves from this matter. However, as Hon'ble the Chief Justice is moved with an application for transfer, we deem it proper to defer the hearing of the matters till 3.00 p.m. In the normal course, we would have granted more time. But the learned senior counsel representing the petitioner in PIL St.No.24110 of 2017 is pressing for grant of ad-interim relief. Therefore, we direct that these matters shall be kept at 3.00 p.m.**

8. Without elaborating, in short, we also record submissions made by Shri Anturkar, Shri Gorwadkar and Shri Saraf that this action of making allegations of bias and of applying for transfer is completely malafide. The learned counsel Shri Saraf also contended that this attempt is made to make the whole issue academic with a view to ensure that there is a lot of noise pollution in coming Ganpati festival. He also stated that this application is politically motivated.

9. **The Registrar (Judicial-I) to ensure that when the said application/praecipe is placed before the Hon'ble the Chief Justice, a copy of this order is produced before the Hon'ble Chief Justice."**

(emphasis added)

8. After declining to recuse itself as per the settled law laid down by the Apex Court, this Bench could have proceeded with the

further hearing of the matters especially when there was no proper transfer application made and the allegations of bias were not supported by any affidavit. Since we were informed that the praecipe was filed, we thought it fit to adjourn the matter till 3.00 p.m. As far as the direction in Clause (9) of the said order dated 24th August 2017 is concerned, the direction to the Registrar (Judicial-I) was to place a copy of the said order dated 24th August 2017 along with said praecipe before the Hon'ble the Chief Justice. The whole object was to ensure that the Hon'ble Chief Justice is informed about the stage at which and the manner in which the praecipe was moved. The praecipe did not disclose the important and material fact that on 23rd August 2017, the matter was adjourned till 24th August 2017 only for accommodating the learned Advocate General. The Registrar (Judicial-I) was to comply with the direction in paragraph 9 of the order only after the order was corrected, signed and uploaded. We make it clear that we had not directed our staff to inform the said Registrar about the passing of the said order as the same was to be immediately signed in the afternoon recess. The order was dictated clearly and loudly in the open Court. Since the praecipe was handed over to the Hon'ble the Chief Justice personally by the learned Advocate General in her chamber, naturally, it was his duty or the Government Pleader's duty to immediately inform the Hon'ble Chief Justice about passing of the said order, either by mentioning before her Court or by filing a praecipe. That was not done.

Yesterday, i.e. on 28th August 2017, the learned Advocate General stated that as the leader of his team, he has accepted the said default on the part of his entire team. The effect of this default was serious. We must record here that in the afternoon recess on 24th August 2017 at about 2 p.m, in the chamber of one of us (A.S.Oka, J), we received a copy of the note submitted by the Registrar (Judicial-I) on the basis of the praecipe dated 24th August 2017 submitted by the State Government and an administrative order passed thereon of transfer of all the matters to a Full Bench presided over by Hon'ble Shri Justice Anoop V. Mohta. The Registrar (Judicial -I) did not point out to the Hon'ble Chief Justice the fact that we had dictated the Order because he was not aware and the State did not point out though its law Officers were aware of the said fact.

9. When we resumed the Court work on 24th August 2017 at 3.00 p.m, we found that most of the learned counsel in the matter were present. Obviously because they were not even aware that the order of transfer of the matters was already passed. We are not sure whether the law officers of the State were aware of the order of transfer. We give them a benefit of doubt. In the open Court, we had to point out to the learned counsel representing the parties that the Hon'ble the Chief Justice has already passed an order of transfer assigning all the matters to a Full Bench. The parties were not given a notice by the State

Government that the Hon'ble Chief Justice will be moved in her Chamber before 11.00 a.m. Unfortunately, it was left to this Bench to inform the parties about the transfer.

10. The allegations of bias, even assuming that they came from the highest authority of the State, were completely baseless and not even supported by an affidavit. In normal course, as we do, we would have been justified in ignoring the allegations with all the contempt it deserved as the same were not supported by an affidavit. However, in this case, it is apparent from the record that the Hon'ble Chief Justice acted upon the praecipe containing serious allegations of bias against one of us (A.S.Oka,J) and passed an order of transfer of all the pending matters which were specially assigned to the Bench headed by one of us (A.S.Oka,J) and PIL St.No.24110 of 2017 which was specifically assigned to this Bench on 23rd August 2017. The transfer was to a Full Bench. Therefore, these allegations of bias cannot be ignored as the allegations of bias were the only basis of the prayer for transfer made by way of a praecipe.

11. We may note here that yesterday in the morning before the Court hours, the Registrar (Judicial-I) handed over a photocopy of the administrative order dated 27th August 2017 passed by the Hon'ble the Chief Justice which recorded that in supersession of the earlier order

dated 24th August 2017 constituting a larger Bench, now all the matters will be placed before a larger Bench presided over by one of us (A.S.Oka,J) along with the Hon'ble Shri Justice Anoop V. Mohta and the Hon'ble Shri Justice Riyaz I. Chagla. The Registrar (Judicial-I) orally informed us that the Hon'ble the Chief Justice has telephonically directed him to inform us that even the administrative order dated 27th August 2017 was subsequently modified by directing that the disposed of Petitions which were pending before this Bench for reporting compliance will be heard by this Bench and PIL St.No.24110 of 2017 which was assigned to this Bench as well as the Writ Petition No.9508 of 2017 which was assigned to the Bench headed by Anoop V. Mohta will be heard by a larger Bench presided over by one of us (A.S.Oka,J) along with the Hon'ble Shri Justice Anoop V. Mohta and the Hon'ble Shri Justice Riyaz I. Chagla. In fact, the order dated 27th August 2017 of the Hon'ble Chief Justice records that all the matters should be listed on 28th August 2017.

12. Accordingly, the matters were listed. When these matters were called out before this Bench on 28th August 2017, we had certain queries to make to the learned Advocate General. After answering the said queries, the learned Advocate General tendered across the Bar another praecipe dated 29th August 2017 which we mark as "P2" for identification. It bears the signature of the learned Assistant

Government Pleader. It records that the praecipe was drafted as per the instructions of Shri Vijay Patil, Deputy Secretary to the Government of Maharashtra. The praecipe makes very interesting reading. The Paragraphs 2 to 4 of the said praecipe read thus:-

- “2. The aforesaid request (b) was made contending that “.....the Hon'ble Judge is somehow harbouring a serious bias in the subject matter of these petitions against the State Machinery in this matter. **The said contention was NOT raised as an allegation against the Hon'ble Judge personally but was limited specifically and limited only as to the 'subject matter' involved in the aforesaid group of matters.** The State itself holds the said Hon'ble Judge individually with pride in the highest esteem and has the highest regards and respect for him, which is demonstrated by the State in various matters decided by the said Hon'ble Judge, from time to time where the State is a contesting party or even otherwise.
3. However unfortunately, it appears that the said intention of the State Government has been widely misunderstood and misinterpreted and has been projected as if the State Government is against the judiciary in general and the Hon'ble Judge in particular, which the State Government never intended nor intends.
4. The State Government unconditionally withdraws even the said contention raised in paragraphs (9) and (12) of the original Application and expresses regret to the said Hon'ble Judge for the said contention and while tendering an unqualified apology also hereby expresses full faith and confidence in the said Hon'ble Judge.”

13. After making very serious allegations of bias against one of us (A.S.Oka,J) which could be certainly termed as scandalous, a stand was taken that though it was alleged that a Judge is harbouring a serious bias in the subject matter of these Petitions against the State Machinery, there were no allegations made against the Judge. Within a span of three days, a change was brought about which could be seen from the said praecipe dated 28th August 2017. As stated earlier, the praecipe proceeded on the footing that though there were allegations of bias made in the praecipe dated 24th August 2017, in fact, there were no allegations made against the Judge. It is not for us to go into the reasons why this U-turn is taken after three days. It is for the others to draw appropriate inference. We informed the learned Advocate General after reading the praecipe that the statements made therein and apology tendered therein cannot be accepted for more than one reason. The first and foremost reason was that apart from the allegations made were scandalous and apart from the fact that the allegations interfered with the due course of legal proceedings, the allegations were against this august Institution which exists for last 155 years. The second reason is that there was no affidavit filed by the appropriate authority tendering unconditional apology. The third reason was that the allegations of bias were so serious that the Hon'ble Chief Justice acted upon the same and passed an order of transfer.

14. Yesterday, the learned Advocate General stated that an affidavit will be filed today tendering an unconditional apology. At that time, we informed the learned Advocate General that it will be appropriate and it will be perhaps obligatory for the State to disclose the name of the decision making authority which took a decision to instruct the learned Advocate General to make allegations of bias against a sitting Judge of this Court. Today, an affidavit of Shri Vijay Patil, Deputy Secretary to the Government on whose instructions earlier documents were tendered in the Court has been filed. The affidavit does not disclose the name or designation of the authority which took a decision to make allegations of bias. The said affidavit dated 29th August 2017 is taken on record and marked "A1" for identification. The Paragraph 2 of the affidavit reads thus:-

"2. As per the authorization and instructions given to me by the State Government, the State Government hereby unconditionally withdraws each and every contention raised and/or allegation made against His Lordship the Hon'ble Shri Justice A.S. Oka in the Application dated 24.08.2017 and the State Government expresses regret to His Lordship the Hon'ble Shri Justice A.S.Oka for the said contentions and/or allegations and while tendering an unqualified apology to His Lordship the Hon'ble Shri Justice A.S.Oka also hereby expresses full faith and confidence in His Lordship the Hon'ble Shri Justice A.S.Oka."

15. The Paragraph 2 of the said affidavit dated 29th August 2017 makes the situation more serious as it is suggested that it is the entire State Government which took a decision to make an allegation of bias against one of us (A.S.Oka,J). The State Government, for obvious reasons, has avoided to mention the name of the real decision making authority.

16. As stated earlier, the allegations of bias were completely unfounded and without any basis and the same were not at all supported even by an affidavit by some officer. Now within a span of 3 to 4 days, the allegations of bias are being unconditionally withdrawn. Yesterday, we had informed the learned Advocate General that what was more worrying was the allegations and the manner in which these allegations were made in the praecipe which adversely affected the reputation of the Institution like Bombay High Court. Today, in the affidavit in Paragraph 3, it is stated a separate affidavit is filed before the Hon'ble the Chief Justice tendering an unconditional and unqualified apology to the entire Institution of the High Court of Judicature at Bombay. The Paragraph 3 of the said affidavit dated 29th August 2017 reads thus:-

“I say that a separate Affidavit is filed/tendered before the Hon'ble the Chief Justice tendering an unconditional and unqualified apology to this

esteemed Institution i.e. The Hon'ble High Court of Judicature at Bombay and the Hon'ble the Chief Justice of this Hon'ble Court for all the acts of omission and/or commission in this regard by the State Government as also for all consequences thereof."

17. The Paragraph 2 of the affidavit dated 29th August 2017 contains unconditional apology which we have already quoted.

18. In normal course, this Court would have been justified in initiating an action under the Contempt of Courts Act against the Officers of the State who were responsible for committing a criminal contempt as making of such allegations and the manner in which the same were made amount to criminal contempt. We are not doing so for more than one reason. We will be guided by a very well-known opinion expressed by the Lord Denning in the case of *Regina v. Metropolitan Police Commissioner ex. p. Blackburn*¹ which is quoted with appreciation and approval by the Apex Court in the famous decision in the case of *In Re S. Mulgaokar*². We are guided by the following observations made by Lord Denning, which read thus:-

"Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations."

19. We must note here that with great deal of emphasis the dignity of this august Institution rests on surer foundations. The second

1 (1968)2 WLR 1204

2 (1978)3 SCC 339

reason why we are not initiating the action for criminal contempt is obviously the unconditional withdrawal of allegations made against one of us (A.S.Oka, J) and tender of an unconditional apology within few days from the date on which the allegations of bias were made. Yesterday, we made it very clear that we are not at all touchy about the allegations made against one of us (A.S.Oka, J). The anguish expressed by us yesterday was due to the impact of such reckless and scandalous allegations made against an individual Judge on the entire institution of the Bombay High Court. Now in the said affidavit, there is an unconditional apology tendered to the entire Institution. The third reason why we are not initiating action for Contempt of Court is perhaps what is pointed out by the learned Senior Counsel Shri A.V.Anturkar. He stated that a signal has gone loud and clear.

20. The fourth reason is a different reason with which few may not agree. We are holding a constitutional office and we have taken an oath under the Constitution. We are expected to show mercy and magnanimity. Therefore, we are showing mercy by accepting the unconditional apology.

21. The other issue which will remain is of enormous damage which is caused to the Institution by the entire episode which started from 24th August 2017. As stated earlier, we agree with what is stated

by the learned senior counsel that now the message has gone clear and loud that interference by any authority including anyone holding a very high office with judiciary and any attempt to lower its dignity will not be tolerated at all and will be strictly dealt with.

22. We, therefore, accept the apology tendered in the affidavit of Shri Vijay Patil, Deputy Secretary on behalf of the Government of Maharashtra. We also accept the statement made that the State Government has unconditionally withdrawn each and every allegations made against one of us (A.S.Oka, J). Therefore, nothing further is required to be done only as far as the allegations of bias are concerned.

23. Place this group of Petitions on 7th September 2017 under the caption of "Directions" for considering compliance.

(RIYAZ I.CHAGLA, J)

(A.S. OKA, J)