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SH. P.K. DAVE

v.

PEOPLES UNION OF CIVIL LIBERTIES (DELHI) AND ORS.

MAY 10, 1996

B

[S.C. AGRAWAL AND G.B. PATTANAIK, JJ.]

*Constitution of India, 1950 : Articles 32, 136, and 226.*

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*Strictures—Expunction of—Alleged commission of gross financial irregularities by Director of Government Hospital—Lt. Governor of Administration refused to suspend him or even shift him at the instance of Principal Secretary to the Prime Minister—Writ petition filed in High Court for his suspension and institution of criminal case against him—High Court passed strictures against Lt. Governor observing his decision as illegal, irrational, unreasonable, arbitrary, mala fide, abuse of power and dictated by Principal Secretary—Held : mala fides against constitutional functionary—Attribution of—Should be avoided unless a clear case was made out and if relief sought for could be granted without such attribution—Strictures justified except words ‘mala fides’, ‘abuse of power’ and ‘dictated’—Hence, these words expunged—Judicial strictures.*

E

*Strictures passed by High Court—Against person neither arrayed as party respondent nor afforded opportunity of hearing—Expunction of—Held : by itself not sufficient to expunge strictures when material on record justified such strictures.*

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*Strictures passed by High Court—Against Government authority—On the basis of scrutiny of notings in office files—Held : such strictures could not be expunged merely on this ground.*

G

*Certain complaints had been received by the Department of Revenue (Intelligence) against the financial irregularities committed by the Director of a Government Hospital. On receipt of such complaints various searches were conducted and several incriminating documents were seized. Two committees appointed by the Administration also confirmed the financial irregularities. The Health Secretary to the Administration after apprising the appellant—Lt. Governor about the matter had put up a note stating that the said Director had played a major role in defrauding the*

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Government and recommended his suspension or his shifting from the Hospital which would facilitate a fair and impartial enquiry/investigation by the crime branch. The Chief Secretary did not agree with the suggestion to suspend the Director but agreed with the alternate suggestion to transfer him. Immediately after the Health Secretary had put up his note the Principal Secretary to the Prime Minister directed the Special Secretary in the Ministry of Home Affairs to pre-empt the Administration from taking any action against the said Director. The Special Secretary then talked to the Health Secretary as well as the Chief Secretary of the Administration. Pursuant to the further direction of the Principal Secretary to the PM to advise the Administration in writing that no action should be taken in the case, the Special Secretary telephonically apprised the appellant-Lt. Governor and then sent a DO Letter to the Chief Secretary. The appellant did not agree with the suggestions of the Health Secretary and the Chief Secretary and passed orders that until CBI made a suggestion after enquiring either for suspending or shifting the Director he could not be shifted. Accordingly the Director was permitted to continue in his office.

The respondent filed a writ petition as public interest litigation before the High Court alleging massive financial fraud perpetrated by the Director of the Hospital involving more than Rs. 39 crores and the loss thereby caused to the public exchequer. The grievance was that no action was being taken and on the other hand he was being shielded and in the process he was obliterating the evidence by destroying the relevant files. It was therefore prayed that he should be immediately suspended and a regular criminal case should be registered against him under the Prevention of Corruption Act, 1947 and the authorities should recover from him the public money wasted on account of the alleged culpabale act. In the proceedings the appellant-Lt. Governor had not been arrayed as a party respondent but the State through the Chief Secretary and the Union of India through Secretary, Ministry of Health had been arrayed as party respondent apart from the said Director.

The High Court in its judgment made certain strictures against the appellant-Lt. Governor observing his decision not to initiate disciplinary action against the said Director and not to shift him from his office, overruling the suggestions of the Health Secretary and the Chief Secretary, was not his own but was dictated by the Principal Secretary to the Prime Minister and was thus illegal irrational, unreasonable, arbitrary, *mala fide*

- A and abuse of power. The appellant-Lt. Governor filed appeal by special leave before this Court seeking expunction of the aforesaid strictures made against him by the High Court.

Disposing of the appeal, this Court

- B HELD : 1. The role of the appellant-Lt. Governor came under direct scrutiny of the Court while deciding the writ petition in question. Therefore, it was necessary for the High Court to scrutinise the role of the appellant in granting relief sought for by the petitioner in the writ petition. [781-B-C]

- C *State of U.P. v. Mohd. Naim*, [1964] 2 SCR 363, held inapplicable.

2. When the orders passed by the appellant came under scrutiny of the Court and the circumstances under which the order had been passed would appear from the relevant discussion made by the different officers and the Court was examining the reasonableness and propriety of the orders passed by the appellant, any comments made by the court without issuing notice to the appellant cannot be *ipso facto* expunged merely on the ground that the appellant had no opportunity of hearing. That apart the appellant has now approached this Court and apart from raising the legal contentions that the High Court did not issue any notice to him he has the full opportunity of indicating the circumstances under which he passed the order and those circumstances are now being scrutinised by this Court. It is, therefore, not possible to accept the contention that the remarks and the strictures given by the Court should be expunged on the sole ground that the appellant had not been given notice nor he had any opportunity of hearing before the High Court. [781-H; 782-A-C]

- F *State of Bihar v. P.P. Sharma*, [1991] 2 SCR 1; *Express Newspaper v. Union of India*, [1986] 1 SCC 133; *Ashok Kumar Yadav v. State of Haryana*, [1985] 4 SCC 417 and *A. M. Mathur v. Pramod Kumar*, [1990] 2 SCC 533, referred to.

- G 3. It is not possible to accept the contention that the notings in the departmental files should not be examined by the Court and on such notings the court would not be entitled to comment upon the conduct of the officer who had submitted the notes. Where the relevant departmental files were produced before the Court by the government and the Court on  
H scrutiny of the same came to the conclusion that the decision has not been

taken fairly, then the Court would be entitled to comment on the role of such person who took the decision. If the contention of the appellant is accepted no administrative authority and his conduct would come under the judicial scrutiny of the Court. That an administrative order is subjected to judicial review is by now the settled position and no longer remains *res integra*. [782-D-G; 783-B-C]

*Puranjit Singh v. Union Territory of Chandigarh and Others*, [1994] Suppl. 3 SCC 471; *State of Bihar v. Kripalu Shankar*, [1987] 3 SCC 34 and *Sarwan Singh Lamba v. Union of India*, [1995] 4 SCC 546 (CB), held inapplicable.

4.1. It is crystal clear that the appellant did not take the decision of his own but on the other hand was influenced by the instruction of the Principal Secretary to the Prime Minister. The High Court, therefore, did not commit any error in coming to the conclusion about the impropriety of the decision and in fact it was influenced by someone else. Therefore, the strictures sought to be expunged has been justifiably made and no case for expunction has been made out, but the word 'dictated' is probably not appropriate. Therefore, the same is modified by replacing the word 'dictated' by 'influenced'. Further, the materials on record do not justify to dub the decision of the Lt. Governor as *mala fide* and, therefore, expunction of the word 'mala fide' is directed. Further, it was not necessary for the Court to hold that the Lt. Governor abused his power though the Court was justified in holding that the Lt. Governor acted in an arbitrary and unreasonable manner. It is, therefore, directed that the expression 'abused his power' be expunged from the stricture. [785-F-G; 786-A-D]

4.2. The power to expunge any remark made by a Court in a judgment is an extraordinary power and can be exercised only when a clear case is made out. It is also a cardinal principle that a judge should take special care in making disparaging remark against a person or authority whose conduct comes in for consideration before him in any case to be decided by him and should not make any un-called for remarks which would be against judicial discipline. If the relief sought for can be given to the applicant without dubbing the conduct of the person concerned to be *mala fide* then the Court should refrain from coming to any conclusion on mere assertions in as much as the allegations of mala fides have to be specifically made and would have to be established by the person who seeks

A relief on that ground. To avoid harsh words and intemperate language and to have self-restraint is a part of judicial training of a judge and, therefore, a judge should be extremely careful while commenting upon the conduct of another individual particularly when that individual is not before the Court. [783-E-G]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8242 of 1996.

From the Judgment and Order dated 26.5.95 of the Delhi High Court in C.W. No. 3032 of 1994.

C K.K. Venugopal, Ms. A. Subhashini, A. Ranganadhan for the Appellant.

Shanti Bhushan, Ms. Savera Singha, Prashant Bhushan, S. Srinivasan, K.K. Laroia, Lakshmi Raman Singh and Ms. Kamini Jaiswal for the

D Respondents.

The Judgment of the Court was delivered by

PATTANAIK, J. Leave granted.

E This Appeal by Special Leave has been filed by Shri P.K. Dave, Lt. Governor of Delhi seeking expunction of the following strictures made against him by the Division Bench of Delhi High Court in its judgment dated 26.5.1995 in Civil Writ Petition No. 3032 of 1994. The strictures sought to be expunged are :

F "(a) We would hold that the decision of the Lt. Governor, Delhi, not to initiate disciplinary action against respondent no. 2 and not to shift him from the post of Director, G.B. Pant Hospital, is vitiated by illegality, irrationality, arbitrariness and *malafides* and hence it has no legal sanction. It is declared accordingly.

G (b) In fact by rejecting the suggestion of the Secretary and the Chief Secretary to transfer Dr. Khalilullah the Lt. Governor acted in an arbitrary and unreasonable manner and abused his power.

H (c) The Lt. Governor overruled and rejected the suggestion of the Secretary and the Chief Secretary in an arbitrary and un-

reasonable manner. No fair minded authority could have rejected the suggestion in the given circumstances. A

(d) In these circumstances the learned counsel for the petitioners is justified in alleging that the decision not to take disciplinary action against Dr. Khalilullah and not to shift him from the post of Director of G.B. Pant Hospital was not taken by the Lt. Governor on his own and that it was dictated by someone else, that is, Shri A.N. Verma who is stated to be a close friend and personal patient of Dr. Khalilullah." B

The Writ Petition in question had been filed by the Peoples Union of Civil Liberties and Delhi Medicos' and Scientists' Front alleging massive financial fraud perpetrated by the Director of G.B. Pant Hospital involving more than Rs. 39 crores and the loss thereby cause to the public exchequer. One Dr. A. Khalilullah was the Director of G.B. Pant Hospital who was alleged to have committed financial fraud. The prayer in the Writ Petition was that the said Dr. Khalilullah should be immediately suspended and a regular criminal case should be registered against him under the provisions of Prevention of Corruption Act and the Authorities should recover from him the public money wasted on account of the alleged culpable act of said Dr. Khalilullah. In the proceedings the appellant had not been arrayed as a party respondent but the State of Delhi through the Chief Secretary and Union of India through Secretary, Ministry of Health had been arrayed as party respondents apart from Dr. Khalilullah, the then Director of G.B. Pant Hospital. The applicants had alleged that certain complaints had been received by the Department of Revenue (Intelligence) against the financial irregularities committed by Dr. Khalilullah and on receipt of such complaints various searches have been conducted in the premises of several suppliers of hospital equipments of G.B. Pant Hospital. In course of search several articles were seized and several incriminating documents have also been seized. Notices also have been issued to the suppliers as well as to the authorities. But the Delhi Administration had appointed a Committee to investigate into the matter which is commonly know as 'Arora Committee'. The said Committee had clearly found several irregularities to the extent that even machines and equipments imported for G.B. Pant Hospital have never been brought to the hospital and are still lying in the cellars duly packed for years together. The report further indicated that some of the machines purchased for G.B. Pant Hospital from the Govern- C  
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A ment funds were found installed in a private hospital like Batra Hospital. Notwithstanding the aforesaid report of the Arora Committee no action has been taken against Dr. Khalilullah. The Collector of Customs had imposed penalty on several suppliers for alleged irregularities committed by them. In June 1993 the Comptroller and Auditor General of India in

B his report to the Union of India devoted to the gross financial malpractices in the G.B. Pant Hospital and when the report was placed in Parliament the Delhi Administration appointed another Committee under the Chairmanship of Dr. A.K. Gupta, Dean of Maulana Azad Medical College. Gupta Committee also submitted its report in October 1993 and the

C Committee found gross financial irregularities to the extent that the equipments worth Rs. 17 crores were unaccounted and 228 files relating to purchase of equipments were missing from the official records. It is on the basis of that report when the Health Secretary to the Government of Delhi Administration had recommended suspension of Dr. Khalilullah or his shifting from G.B. Pant Hospital so that appropriate enquiry can be made

D in a congenial atmosphere, no action was taken against him. It was also alleged that said Dr. Khalilullah while continuing as the Director of the Hospital is destroying the original record to wipe off the evidence and, therefore, the applicants prayed for the relief as already stated. The respondents before the High Court filed their counter affidavits denying

E the allegations made and opposing the relief sought for. The respondent no. 2 Dr. Khalilullah himself in his affidavit denied the allegations and contended that he has no role in the so-called financial irregularities and though fraud had been committed by the officers below him he had no knowledge of it nor had he given any consent to it. He had further stated

F that this application which is in nature of Public Interest Litigation had been filed at the behest of one Dr. Anoop Safaya. In the rejoinder filed by the respondents it was further averred that no action was taken against Dr. Khalilullah because of unusual interest shown by the Principal Secretary to the Prime Minister and it is because of him the Union Home Secretary had addressed a letter to the Chief Secretary, Delhi Administration not to

G precipitate action against Dr. Khalilullah and it is because of this external pressure, against the public interest, the appellant did not accept the recommendations of the Health Secretary to the Delhi Administration as well as the Chief Secretary, Delhi Administration and allowed the continuance of Dr. Khalilullah as the Director of G.B. Pant Hospital. The High

H Court ultimately considered all the relevant documents and came to the

conclusion that the matter relating to initiation of disciplinary action against Dr. Khalilullah did not receive a proper and fair consideration and, therefore, the authority competent to take the decision in the matter should consider and decide the question in accordance with law. Further in view of the allegations about missing of purchase files and destruction of evidence, the attempts to cover up the fraud, the possible involvement of Dr. Khalilullah himself in the fraud, pending investigation into the irregularities, the continued damage that could be done to a fair and proper investigation and the need for maintaining public confidence in the matter, since the authorities concerned were indifferent and irresponsible in their attitude on account of external pressure the Court directed that Dr. Khalilullah should not be allowed to function as Director of G.B. Pant Hospital and he should forthwith relinquish his office as Director of the Hospital and shall hand over charge to the seniormost Head of the Department in the Hospital. We are not concerned with the legality of the aforesaid directions in the present case. Suffice it to mention that Dr. Khalilullah had moved this Court by way of Special Leave Petition and the same was disposed of by order dated 5th June, 1995 directing the Central Government to take a decision and submit a report as to initiation of any disciplinary action against Dr. Khalilullah by June 15, 1995 and since no interim stay was granted in respect of the High Court judgment the order had to be complied with. But in the judgment in question since role of the appellant came up for consideration more particularly his inaction in not shifting Dr. Khalilullah as Director of G.B. Pant Hospital notwithstanding the recommendation of the Health Secretary and Chief Secretary to Delhi Administration the aforesaid strictures had been passed by the High Court which the appellant wants expunction.

Mr. K.K. Venugopal, the learned senior counsel appearing for the appellant submitted that the appellant not being a party to the Writ Petition no strictures could have been passed by the High Court without issuing notice to him and without hearing him on the subject. He further contended that in view of the relief sought for in the Writ Petition no question of animadverting to any conduct of the appellant in regard to the transfer of Dr. Khalilullah from G.B. Pant Hospital as an integral part of the judgment of the Court would arise and, therefore, the so-called strictures were wholly uncalled for. The learned counsel also urged that the transfer of Dr. Khalilullah not being governed by any statute and being purely an administrative decision and the appellant having exercised his



- A discretion in the matter, there was no justification for the Court to hold his discretion as illegal, irrational, arbitrary and malafide. According to Mr. Venugopal the decision of the appellant was his personal and had no connection with the request made by the Principle Secretary to the Prime Minister and the appellant having taken such decision *bona fide* the High Court should not have issued the strictures. According to Mr. Venugopal
- B the appellant who was a seasoned bureaucrat having weighed the pros and cons of suspending and/or shifting a senior doctor of eminence and having come to the conclusion that great injustice would be caused if such hasty decision is taken and, therefore, suggested not to take any action until the CBI, after investigation, makes such prayer, the said decision cannot be
- C characterised as an arbitrary decision and, therefore, the strictures made by the High Court in the judgment in question are wholly inappropriate uncalled for and should be expunged by this Court.

- D Mr. Shanti Bhushan, learned senior counsel appearing for the Peoples Union of Civil Liberties at whose instance the High Court has passed the order, on the other hand submitted, that for granting the relief sought for against Dr. Khalilullah the Court had no other option than to examine the order of the appellant who had directed not to shift Dr. Khalilullah and not to suspend him until CBI makes recommendation. And therefore, the role of appellant was very much under scrutiny of the Court.
- E Mr. Shanti Bhushan further urged that no doubt the order passed by the appellant was in discharge of his administrative function, but the learned counsel contended that when a public authority discharges his public function and duty and a complaint is made by an individual in respect of same, the Court would be fully entitled to investigate and find out whether
- F the power has been exercised in a fair and honest manner or has been exercised on account of certain external pressure and if the Court come to the conclusion that the power has not been exercised honestly and fairly then there would be no other alternative with the Court than to interfere with the order and to pass the order in accordance with law. According to Mr. Shanti Bhushan from the note sheet which was placed before the Court
- G it is apparent that the appellant who was earlier apprised about the matter by the Health Secretary had possibly agreed and pursuant to which the Secretary Health, Delhi Administration put up the note but when the matter was made known before final decision was taken, it is the intervention of the Principal Secretary to the Prime Minister which resulted in the
- H order of the appellant and therefore, the appellant did not pass the same

fairly and honestly as a seasoned bureaucrat but on the other hand on account of external pressure and pursuant to the request made by Shri Verma, the Principal Secretary to the Prime Minister. According to Mr. Shanti Bhushan in view of series of enquiry reports alleging large scale financial irregularities by Dr. Khalilullah, no reasonable man could have allowed Dr. Khalilullah to continue on the post of Director and it had been revealed that several important files have been destroyed and the remaining files would also have been destroyed. In this view of the matter, according to Mr. Shanti Bhushan complaint by the Lt. Governor is wholly unjustified. So far as non-implement of the appellant in the Writ Petition is concerned, Mr. Shanti Bhushan urged that the Court has not taken into consideration any other material than the relevant files which have been produced for inspection and the entire comments are based upon the notes and orders passed by different authorities and, therefore, no prejudice can be said to have been suffered by the appellant by not getting any opportunity of hearing in the Writ Proceeding. That apart in the application filed for expunction he had full opportunity to explain in this Court and yet nothing has been indicated and, therefore the so called strictures made by the High Court should not be expunged. Lastly Mr. Shanti Bhushan urged that in the recent past while the other constitutional functionaries have not been able to discharge their constitutional obligations for one reason or other this is the only wing i.e. the judicial wing which has been able to discharge its constitutional obligation to the satisfaction of the society at large and the public at large has the full confidence on the judicial system and any interference with the observations/strictures made in the circumstances of this case would be a blow to the public confidence and accordingly no intervention by this Court is called for.

In view of the submissions made at the Bar the first question that arises for consideration is whether the role of the appellant was at all necessary to be scrutinised by the Court in granting the relief sought for. As has been stated earlier the Peoples' Union of Civil Liberties had filed an application as a Public Interest Litigation and the entire grievance was that notwithstanding gross financial irregularities committed by Dr. Khalilullah no action is being taken and on the other hand he is being shielded and in the process he is obliterating the evidence in the case by destroying the relevant files. That there has been serious financial irregularities in the matter of purchase of instruments to the tune of crores of rupees cannot be disputed in view of the two reports of the two

- A Committees. The reports, however, did not specify the actual role and responsibility of Dr. Khalilullah who was the Head of the Hospital and, therefore, it became imperative to find out the involvement of said Dr. Khalilullah and taking suitable action against him. It is in this context when the Secretary Medical Shri R. S. Sethi submitted the proposal, he had suggested the course of action to be taken in the matter for the approval of the Lt. Governor. Clause V of the said note may be extracted herein-below in extenso :

- C "I would strongly recommend that Dr. Khalilullah should be placed under suspension or immediately shifted from G.B. Pant Hospital as available evidence shows that he has played a major role in defrauding the Government. This step would also facilitate a fair and impartial enquiry/investigation by the Crime Branch. Also, we may initiate disciplinary proceedings for imposition of major penalty against him. I am told that a large number of doctors and professors are reluctant to speak out so long as Dr. Khalilullah continues in G.B. Pant Hospital. In fact, we have to act firmly now after what has been revealed otherwise we would be sending wrong signals to other Hospitals/Institutions."

- E Thus the Secretary came to the conclusion that Dr. Khalilullah had played a major role in defrauding the Government and, therefore, he should be suspended or immediately shifted from G.B. Pant Hospital which would facilitate a fair and impartial enquiry/investigation by the Crime Branch. He had also indicated that doctors and professors are reluctant to speak so long as Dr. Khalilullah continues in G.B. Pant Hospital. It also transpires from the note that before sending proposal he had discussed the matter with the Lt. Governor. The Chief Secretary Shri Takkar also agreed with the Secretary (Medical) that it is necessary to remove Dr. Khalilullah from his present position in the interest of holding a fair and proper enquiry into the scandal but he did not agree with the suggestion of the Secretary to suspend him and, on the other hand, he suggested transfer of
- G Dr. Khalilullah from G.B. Pant Hospital. But when the file was placed before the appellant he did not agree with either of the suggestions and on the other hand passed orders that until CBI makes a suggestion after enquiring either for suspending or shifting of Dr. Khalilullah he cannot be shifted. It is on account of the aforesaid order of the appellant that Dr.
- H Khalilullah was permitted to continue as the Director of the G.B. Pant

Hospital. In the aforesaid premises the role of the appellant came directly under the scrutiny of the Court when a complaint was made by the petitioners in the Writ Petition and relief to shift Dr. Khalilullah from G.B. Pant Hospital was sought for. We are, therefore, of the view that the role of the appellant came under direct scrutiny of the Court while deciding the Writ Petition in question.

Mr. K.K. Venugopal, learned senior counsel had relied upon the decision of this Court in *State of U.P. v. Mohd. Naim*, [1964] 2 SCR 363 wherein this Court had observed that the Court would not be justified in passing strictures unless it was necessary for the disposal of the case to animadvert to those aspects in regard to which the strictures have been passed. But the aforesaid decision, in our considered opinion is of no assistance to the appellant in view of our earlier conclusion that the role of the appellant came under direct scrutiny of the Court to decide the question as to whether the relief sought for could be granted or not?

The next question that arises for consideration is whether the appellant not having been arrayed as a party respondent and the High Court not having issued any notice to him, was the High Court entitled to make such serious comments and strictures on the appellant. There cannot be any dispute with the proposition that no man should be condemned without having an opportunity of hearing. Mr. Venugopal, the learned senior counsel appearing for the appellant relied upon the decisions of this Court to the effect that when allegations of *mala fide* are made against a person then the said person should be impleaded as a party. The learned counsel placed reliance on the decision of this Court in *State of Bihar v. P.P. Sharma*, [1991] 2 SCR 1, *Express Newspaper v. Union of India*, [1986] 1 SCC 133; *Ashok Kumar Yadav v. State of Haryana*, [1985] 4 SCC 417 and *A.M. Mathur v. Pramod Kumar*, [1990] 2 SCC 533. In the last case as the person concerned who was the former Advocate General had not been made a party in the Courts before this Court entertained the Special Leave Petition filed by him and ultimately disposed of the same on merits. In the case in hand we have also entertained the Special Leave Petition filed by the Lt. Governor. Mr. Shanti Bushan, learned senior counsel appearing for the respondent also did not raise any contention with regard to the maintainability of the application. When the orders passed by the appellant came under scrutiny of the Court and the circumstances under which the order had been passed would appear from the relevant discussion made

- A by the different officers and the Court was examining the reasonableness and propriety of the orders passed by the appellant, any comments made by the Court without issuing notice to the appellant cannot be *ipso facto* expunged merely on the ground that the appellant had no opportunity of hearing. That apart the appellant has now approached this Court and apart
- B from raising the legal contentions that the High Court did not issue any notice to him he has the full opportunity of indicating the circumstances under which he passed the order and those circumstances are now being scrutinised by this Court. In this view of the matter we are unable to persuade ourselves to agree with the submissions made by Mr. Venugopal, learned senior counsel appearing for the appellant that the remarks and
- C the strictures given by the Court should be expunged on the sole ground that the appellant had not been given notice nor he had any opportunity of hearing before the High Court.

- D In course of his arguments Mr. Venugopal, learned senior counsel had advanced another reasoning in support of his prayer for expunction of the strictures made by the High Court, the same being that the notings in the departmental files should not be examined by the Court and on such notings the Court would not be entitled to comment upon the conduct of the officer who had submitted the notes. He further submitted that the
- E basis of strictures passed by the High Court being the notes of the Secretary Health and Chief Secretary which was not agreed to by the Lt. Governor, the High Court was wholly unjustified in issuing the strictures in question. In support of this contention the learned counsel relied upon the decisions of this Court in *Puranjit Singh v. Union Territory of Chandigarh and others*, [1994] Suppl. 3 SCC 471; *State of Bihar v. Kripalu Shankar*,
- F [1987] 3 SCC 34 and *Sarwan Singh Lamba v. Union of India*, [1995] 4 SCC 546 (CB). But the ratio of the aforesaid cases has to be understood in the relevant facts of the case and it cannot be of universal application. Where the relevant departmental files were produced before the Court by the government and the Court on scrutiny of the same came to the conclusion that the decision has not been taken fairly, then the Court would be entitled
- G to comment on the rôle of such person who took the decision. As has been indicated earlier Dr. Khalilullah was continuing as the Director of the G.B. Pant Hospital notwithstanding different Enquiry Committees as well as Comptroller and Auditor General of India pointed out gross financial irregularities in the matter of purchase in the hospital in question. The Writ
- H Petition had been filed in the Public Interest for a direction that investiga-

tions be made by an appropriate Investigating Agency and action should be taken against the Director and he should be shifted from the place immediately. It is in this context that when the relevant file was produced indicating therein that the appellant who is the final authority in the matter had passed orders not to disturb said Dr. Khalilullah until CBI after enquiry recommends for his shifting, the said order together with all the antecedent orders of the subordinate authority was scrutinised by the Court. In such circumstances if the contention of Mr. Venugopal is accepted then no administrative authority and his conduct would come under the judicial scrutiny of the Court. That an administrative order is subjected to judicial review is by now the settled position and no longer remains *res integra*. This being the position we fail to appreciate the contentions of Mr. Venugopal that the notings in the file or the orders passed by the Secretary and Chief Secretary as well as the Governor should not have formed the basis of the strictures passed against the appellant.

Then the most crucial question that arises for consideration is whether in the facts and circumstances of the case the Court was justified in passing the strictures which have already been enumerated, and if not, then whether this Court would be entitled to expunge the same. The power to expunge any remark made by a Court in a judgment is an extraordinary power and can be exercised only when a clear case is made out. It is also a cardinal principle that a judge should take special care in making disparaging remark against a person or authority whose conduct comes in for consideration before him in any case to be decided by him and should not make any un-called for remarks which would be against the judicial discipline. If the relief sought for can be given to the applicant without dubbing the conduct of the person concerned to be *mala fide* then the Court should refrain from coming to any conclusion on mere assertions in as much as the allegations of *mala fides* have to be specifically made and would have to be established by the person who seeks relief on that ground. To avoid harsh words and intemperate language and to have self-restraint is a part of judicial training of a judge and, therefore, a judge should be extremely careful while commenting upon the conduct of another individual particularly when that individual is not before the Court. Bearing in mind the aforesaid principle we would now examine the strictures made by the Court against the appellant Mr. Dave.

At the outset we have no hesitation to come to the conclusion on

- A going through the notes of the Secretary Health and modified by the Chief Secretary as well as the order of the appellant Shri Dave that the said order cannot be said to be reasonably arrived at by a man with vast administrative experience. The operative part of the order of the appellant indicates that he was not willing to agree with the suggestion of the Chief Secretary even to transfer Dr. Khalilullah from his position as Director of G.B. Pant Hospital so as to have a fair and proper enquiry solely because of the fact that Dr. Khalilullah happens to be a nationally recognised specialist and had been honoured with Padma Shree and Padma Bhushan. It is the common administrative practice that no enquiry into the conduct of the Head of an Organisation can be impartially made so long he is allowed to continue as the Head of the Organisation. In the case in hand the notes of the Secretary clearly indicated that several important files have been destroyed in the meantime and the doctors and other employees of the hospital are reluctant to speak against Dr. Khalilullah so long as he continues as the Director of the Hospital. The Chief Secretary having considered the notes of the Secretary had, therefore, suggested that Dr. Khalilullah should be transferred from his position in the interest of holding a fair and proper enquiry into the scandal. We are afraid, that if a nationally recognised specialist having been honoured with Padma Shree and Padma Bhushan gets involved in financial irregularities and an enquiry becomes imperative then administrative exigencies did require for his shifting from the place.

- The order of the appellant not to shift him solely because he was a doctor of national repute and certain awards have been given to him does not reflect that consideration of the kinds of good administration. It is in this context the last part of the order of the Lt. Governor assumes great significance which may be quoted in extenso :

- "I have explained the facts of the case and my decision to Principal Secretary to the Prime Minister and requested him to assist us in convincing the CBI to take up the case expeditiously."

- The chronology of events would indicate that the Gupta Committee report indicating large scale financial irregularities in the matter of purchase in the hospital was given in October 1993. The Health Secretary to the Government of Delhi Administration discussed the matter with the Lt. Governor and then put up his notes with suggestions for approval of the

Chief Secretary and the Lt. Governor on 16.11.93. the Chief Secretary A  
 though did not approve of the suggestion of the Secretary to suspend Dr.  
 Khalilullah but agreed with the alternative suggestion to transfer Dr.  
 Khalilullah for enabling the Investigating Agency to hold a fair and impar-  
 tial enquiry into the scandal. The Lt. Governor, however, disapproved the B  
 suggestion of the Chief Secretary and held that no action need be taken.  
 The High Court, therefore, was confronted with the question as to whether  
 the Lt. Governor properly applied his mind to all the relevant aspects and  
 whether ultimate decision was honest, uninfluenced by any extraneous  
 consideration. It may be noticed that immediately after the Secretary  
 (Medical) Shri R.S. Sethi put up his notes dated 16th of November, 1993, C  
 suggesting suspension of Dr. Khalilullah or atleast his shifting from the  
 G.B. Pant Hospital Shri Amar Nath Verma, Principal Secretary to the  
 Prime Minister directed the Special Secretary Shri Satyam in the Ministry  
 of Home Affairs to pre-empt the Delhi Administration from taking any  
 action against Dr. Khalilullah and the Special Secretary then talked to Shri D  
 Sethi, the Secretary (Medical) as well as Shri R.K. Takker, Chief Secretary.  
 Telephonic discussion of Shri Verma, Principal Secretary to the Prime  
 Minister and Shri Satyam, the Special Secretary to the ministry of Home  
 Affairs was on 19th November, 1993 on which date the file had left the  
 table of the Secretary Health and had reached the Chief Secretary. Shri  
 Verma had not chosen to put anything on record as to where from he could E  
 learn about the proposed action suggested by the Secretary Shri Sethi. Said  
 Shri Verma not being satisfied with the telephonic discussion he had with  
 Shri Satyam on the 19th, called him again on 20th November, 1993 and  
 directed him to advise the Delhi Administration in writing so that no action  
 should be taken in the case. Shri Satyam, therefore, telephonically apprised F  
 the Lt. Governor and sent a D.O. Letter to the Chief Secretary. It is,  
 therefore, crystal clear that the appellant did not take the decision of his  
 own but on the other hand was influenced by the instruction of Shri Verma  
 the Principal Secretary to the Prime Minister. But since Shri Verma's  
 conduct is not directly under our scrutiny in the present case we do not  
 think it necessary to focus our attention on that any more. Suffice it to say G  
 that it is because of the instruction of Shri Verma that the appellant passed  
 the order not even to shift Dr. Khalilullah and in his order also indicated  
 that he had explained the facts to the Principal Secretary to the Prime  
 Minister. In the aforesaid premises it is difficult for us to accept the  
 submission of Shri Venugopal, learned senior counsel for the appellant that H



- A the decision was his own and not on any extraneous consideration. The High Court, therefore did not commit any error in coming to the conclusion about the impropriety of the decision and in fact it was influenced by someone else. Therefore, the strictures mentioned in 'd' sought to be expunged has been justifiably made and no case for expunction has been made out, but the word 'dictated' is probably not appropriate. We accordingly modify the same by replacing the word 'dictated' by 'influenced'.
- B

- Coming to the stricture 'a' we, however, find the materials on record do not justify to dub the decision of the Governor as *mala fide* and we, therefore, direct expunction of the word 'and *mala fides* ' after the word 'arbitrariness' from the stricture 'a'.
- C

- So far as the stricture 'b' is concerned in our considered opinion, it was not necessary for the Court to hold that the Lt. Governor abused his power though Court was justified in holding that the Governor acted in an arbitrary and unreasonable manner. As has been stated earlier the Court should refrain from using intemperate language as part of judicial discipline while examining the role and conduct of high constitutional functionaries. In the circumstances, we direct that the expression 'abused his power' be expunged from stricture 'b'.
- D

- So far as stricture 'C' is concerned we see nothing therein which can be said to be objectionable and, therefore, the prayer for expunction stands rejected.
- E

With the aforesaid observations the appeal stands disposed of.

V.S.S.

Appeal disposed of.