J. JAYALALITHA ETC. ETC. A

v.

UNION OF INDIA AND ANR.

MAY 14, 1999

[G.T. NANAVATI AND S.P. KURDUKAR, JJ.] B

Prevention of Corruption Act, 1988 (PCA), S.3—Constitution of India, Articles 14 and 21—Notification issued by State government establishing three additional Sessions Court at Chennai and appointing Judges of those courts as Special judges to try exclusively cases of corruption against former C *Chief Minister and other ministers—Challenged on ground that neither the Act nor S.3 disclosed any policy for deciding when a special judge could be appointed—Held, provisions sufficiently indicate the object that cases of corruption shall be tried speedily which is the policy of the Act and underlies S.3 as well; S.3 not violative of Article 14.* D

Constitution of India, Article 14—Administrative Law—Notification issued by State Government appointing special courts to try cases of corruption against former Chief Minister amd Ministers under PCA—Challenged as violative of Article 14 on the grounds of malice in law and fact—Held, no material brought on record or factual averments made to show that E *government had singled out petitioners for political targeting; notification neither discriminatory nor violative of Article 14—Prevention of Corruption Act, 1988, S.3—Pleadings.*

Constitution of India, Article 233—Whether appointment of Special judges made in consultation with High Court—Held, proposal and posting F *of additional judges as special judges approved by Full Court; allocation and distribution of work being an administrative act could be performed by Acting Chief Justice acting alone.*

Interpretation of Statutes—Power of State Government under S.3 of PCA to appoint as many special judges as may be necessary for area or areas G *or for such case or group of cases—Held, the word 'or' in S.3 would mean that government has the power to do either or both the things.*

Words and Phrases—Prevention of Corruption Act, 1988, Ss.3, 4(2)—Held, the words 'as may be necessary' in S.3 is the guideline according to which the government has to exercise discretion to achieve the object of H

speedy trial; the term 'necessary' means what is indispensable, needful or essential; word 'case' in the second part of S.4(2) includes cases—

Prevention of Corruption Act, 1988 (PCA), S.4 (2)—High Court dismissing writ petitions of former Chief Minister and Ministers challenging notifications issued in April, 1997 under PCA appointing special courts to try cases of corruption—Trial going on since May, 1997—While SLPs pending in Supreme Court Central Government on February 5, 1999 issuing notification under S.4(2) reallocating cases to be tried by the special judges—Held, notification was bad and not in accordance with S.4(2); Central Government failed to establish necessity for issuing notification.

J was the Chief Minister of Tamil Nadu between 1991 and 1996. In the elections to the legislative assembly in 1996, the rival party (DMK) came to power and many criminal cases of corruption under the Prevention of Corruption Act, 1988 (PCA) were filed against J and her cabinet colleagues. The State Government after obtaining the concurrence of the High Court issued on April 30, 1997 a notification whereby three additional Courts of City Civil and Sessions Judges, Chennai were established and the Judges of those Courts were appointed as Special Judges to try exclusively on day-to-day basis the criminal cases filed against J and her cabinet colleagues. The notification as well as s.3 PCA under which it was issued were challenged by J and her colleagues as being violative of Articles 14 and 21 of the Constitution.

The High Court dismissed the writ petitions and held that S.3 in so far as it empowered the Government to appoint special Judges "for such case or group of cases" was constitutionally valid and not violative of Articles 14 and 21. It also upheld the validity of the notification. J and her colleagues thereafter filed SLPs in this Court.

While the SLPs were pending, the Central Government, in exercise of its powers under Ss. 3(1) and 4(2) PCA issued two notifications on February 5, 1999 appointing the XIth, XIIth and XIIIth Additional City Civil and Sessions Judges, Chennai as Special Judges for trial of offences specified in S.3(1) and specified some Special Judges in the city of Chennai to be the Judges who would try the offences specified S.3(1). The writ petition by a voluntary consumer organisation, VOICE, challenging these two notifications was dismissed by the High Court in view of the pendency of the SLPs in this Court. VOICE then appealed to this Court.

It was contended on behalf of J and her colleagues that (1) S.3(1) PCA permitted the appointment of a Special Judge for a group of cases only where no Special Judge has been appointed for the area or areas within which the offence under PCA has been committed; (2) any other interpretation of S.3 would render it violative of Article 14 of the Constitution; (3) the notification issued by the State Government was *mala fide* both in law and in fact; (4) there was on valid consultation with the High Court as regards appointment of the Special Judge and (5) the notification issued by the Central Government being legal and proper replaced the one issued by the State Government.

Dismissing all appeals filed by J and her colleagues and allowing the appeal filed by VOICE, this Court

HELD : 1.1. The challenge to S.3(1) of PCA must fail. The discretion conferred by Section 3 upon the Government is not unfettered or unguided. [670-E-F]

1.2. The provisions sufficiently indicate the intention of the legislature and also the object of the Act that the cases of corruption shall be tried speedily and completed as early as possible. This is the policy of the Act and it underlies Section 3 also. Therefore, while exercising the power under Section 3 the Government shall have to be guided by the said policy. [668-F-G]

Kathi Raning Rawat v. *The State of Saurashtra,* [1952] SCR 435; *Re Special Courts Bill,* 1978 [1979] 2 SCR 646; *Kedar Nath Bajoria* v. *State of West Bengal,* [1954] SCR 30 and *Jyoti Prasad* v. *The Administrator for the Union Territory of Delhi,* [1962] 2 SCR 125, followed.

State of West Bengal v. *Anwar Ali Sarkar,* [1952] SCR 284; *Hamdard Dawa Khana* v. *Union of India,* [1960] 2 SCR 671; *A.R. Antulay* v. *R.S. Nayak* [1988] 3 SCC 602; *A.N. Parasuraman* v. *State of Tamil Nadu,* [1989] 4 SCC 683; *Kartar Singh* v. *State of Punjab* [1994] 3 SCC 569; *Lachmandas Kewalram Ahuja* v. *The State of Bombay,* [1952] 2 SCR 710; *Direndra Kumar Mandal* v. *The Superintendent,* [1955] 1 SCR 224; *M.K. Gopalan* v. *State of M.P.,* [1955] 1 SCR 168; *Asgarali Nazarali Singaporawalla* v. *The State of Bombay,* [1957] SCR 678 and *Jagannath* v. *State of Maharasthra,* [1963] Supp. 1 SCR 573, referred to.

1.3. The exercise of discretion by the Government under S.3 has to be guided by the element of requirement in public interest. [670-B]

2.1. No factual averments were made by the appellants in the writ

A petitions to make out a valid case of malice in fact. The material on record justified the exercise of power by the Government and, therefore, the impugned notification cannot be said to be either discriminatory or violative of Article 14. [673-D-E]

2.2. Speedy trial of corruption cases against public servants/officers
B holding high Government officials being a relevant consideration it cannot be said that by appointing separate special judges for speedier trial of those cases the Government has either singled out bases against its political opponents or that the power has been exercised by the Government for political targeting. [673-B]

C

V.C. Shukla v. *State,* [1980] 2 SCC 665, referred to.

3. The contention that there was no valid consultation with the High Court in the matter of appointment of Special Judges was negatived. The proposal was examined by a committee of judges appointed by the High Court
D and thereafter the Full Court had approved the same. Even the posting of Sessions Judges as special judges for those three additional courts was approved by the Full Court. Only the allocation or distribution of those cases amongst those three special judges was done by the Acting Chief Justice. That being a purely administrative act could have been performed by the
E Acting Chief Justice alone. Even if it was considered as an irregularity it was not of such a magnitude as would require invalidation of that part of the notification. [673-F-H; 674-A]

4.1. The word 'or' as used in S.3 would mean that the Government has the power to do either or both the things. The word 'or' which is conjunction,
F is normally used for the purpose of joining alternatives and also to join rephrasing of the same thing but at times to mean 'and' also. Alternatives need not always be mutually exclusive. Moreover, the word 'or' does not stand in isolation and, therefore, it will not be proper to ascribe to it the meaning which is not consistent with the context of S.3. [665-B; 666-G-H]

G

State of U.P. v. *Sat Narain,* AIR (1951) Allahabad 218, referred to.

4.2. S.3 is an empowering section and depending upon the necessity the Government has to appoint Special Judges for an area or areas or case or group of cases. Even in the some area where a Special Judge has already
H been appointed, a necessity may arise for appointing one more Special Judge

for dealing with a particular case or group of cases because of some special features of that case or cases or for some other special reasons.[674-D-G] A

5.1. The words 'as may be necessary' are the guidelines according to which the Government has to exercise its discretion to achieve the object of speedy trial. The terms 'necessary' means what in indispensable, needful or essential. [669-C-D] B

Jayantilal Purshotamdas v. *State,* **(1970) 72 GLR 403, referred to.**

5.2. The word 'case' in the second part of S.4(2) includes 'cases' and, therefore, when a special judge or judges is/are appointed for a case or group of cases then only that special judge or those special judges can hear those cases, otherwise the very purpose of making such appointment or appointments would be frustrated. [675-E] C

6.1. The Central Government failed to establish the necessity of issuing the impugned notification dated 5.2.1999 which was not in accordance with S.4(2) PCA. It was uncalled for at that stage and, therefore, has to be regarded as bad. [676-B] D

6.2. The trial cases specified in the impugned State notification was going on since May, 1997 and no necessity had arisen till February, 1999 to exercise the power of allocation in respect of those cases. The Central Government had not placed any material to show why it became necessary for it, after such a long time, to make reallocation of cases to be tried by special judges in the city of Chennai. [675-G] E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3142-3143 of 1999 Etc. Etc. F

From the Judgment and Order dated 3.11.98 of the Madras High Court in W.P. Nos. 9069-9070 of 1997.

Soli J. Sorabjee, Attorney General, C.S. Vaidyanathan, Additional Solicitor General, K.K. Venugopal, P.P. Rao, Shanti Bhushan, A.B. Diwan, N. Natarajan, R. Mohan, Dr. Rajiv Dhawan, K.T.S. Tulsi, K.V. Viswanathan, K.V. Venkataraman, N. Jothi, A. Jeenansaran, V.R. Reddy, R. Shunmughasundaram, V.G. Pragasam, K.K. Mani, R.C. Satish, E.C.Agrawala, K. Sultan Singh, Vikas Pahwa, V. Balachandran, S. Nanda Kumar, G.S. Balamurdgan, L.K. Pandey, V. Ramasubramanian, S. Subramanian, D.K. Garg, D. Krishnan, P. Parmeshwaran, G H

A Manish Singhvi, V. Krishnamurthy, R. Anand Padmanabhan and Pramod Dayal for the Appearing parties.

The Judgment of the Court was deliverred by

G.T. NANAVATI, J. Leave granted in the Special Leave Petitions.

B There appeals arise out of the common judgment of the High Court of Judicature at Madras in a batch of writ petitions filed by Ms. jayalalitha-former Chief Minister of the State of Tamil Nadu, her cabinet colleagues, some MLAs of the AIADMK Party and some officer of the Government, challenging the validity of Section 3 of the Prevention of Corruption Act, 1988 insofar as C it empowers the State Government to appoint as many Special Judges as may be necessary "for such case or group of cases" as may be specified in the notification and also the notification dated 30-4-1997, whereby three additional Courts of City Civil and Sessions Judges, Chennai were established and the Judges of those Courts were appointed as Special Judges to try exclusively on day-to-day basis the criminal cases filed against those writ petitioners D under the Prevention of Corruption Act. The High Court by two separate judgments of the two learned Judges who constituted the Division Bench, dismissed the writ petitions, by holding that Section 3 insofar as it empowers the Government to appoint special Judges "for such case or group of cases" is constitutionally valid and not violative of Articles 14 and 21 of the E Constitution. It also held that the establishment of three additional Sessions Courts at Chennai and appointment of Judges of those Courts as Special Judges by the notification dated 30-4-1997 is also valid and that in no way contravenes Articles 14 and 21 of the Constitution nor does that stand vitiated by mala fides either factual or legal. Aggrieved by the judgment of the High Court, the appellants (except the appellant in appeal arising out of F SLP © No. 2805 of 1998) have filed these appeals. Subsequent to the filing of the SLPs, out of which these appeals arise, the Central Government, in exercise of it powers under sub-section (1) of Section 3 issued a notification on 5.2.1999 appointing the XIth, XIIth and XIIIth Additional City Civil and Sessions Judges, Chennai as Special Judges for trial of offences specified in G sub-section (1) of Section 3 of the Act and investigated by the Delhi Special Police Establishment (CBI) and committed within the area comprised in the Chennai Sessions Division. By another notification of the same date issued in exercise of the powers conferred by sub-section (2) of Section 4 of the Act, the Central Government specified some Special Judges in the city of Chennai to be the Judges who shall try the offences specified in sub-section (1) of H Section 3.

This notification was issued by the Central Government as it was of the view that where there are more Special Judges than one for any area it is the exclusive power of the Central Government to specify which cases shall be tried by which Special Judge of that area and therefore, it was not proper and legal for the State Government to make allotment of cases amongst those three Special Judges by the said notification dated 30.4.1997. The appellants were happy with the said notification and, therefore, obviously did not challenge the same. However, feeling aggrieved by the said notification, the Advocate General of Tamil Nadu and one Mr. M.A. Chinnaswamy-an Advocate practising in this Court-have filed writ petitions in this Court challenging the legality and propriety of the said notification. One organisation known as VOICE (Consumer Care Council), a voluntary consumer organisation, which had in the past taken up various public causes by way of public interest litigation, filed a writ petition in the High Court of Judicature at Madras challenging the said notification. The High Court dismissed the writ petition observing that "the matter relating to the establishment of the special Courts under the provisions of Prevention of Corruption Act by notification by the State Government and ancillary issues are now pending before the Hon'ble Supreme Court and, therefore, it is not desirable or appropriate for us to go into the question as to whether the Central Government has jurisdiction to issue such notification and to consider its effect, pending decision by the Hon'ble Supreme Court and pass any order or issue notice to the other side at this stage. Admittedly, the matter is subjudice and seized by the Hon'ble Supreme Court. In view of the above facts, we do not consider it proper to comment at this stage." VOICE, therefore, filed special leave petition in this Court and considering its credential for initiating a public interest litigation of this type, we have granted leave to it to prefer an appeal against the said order passed by the High Court.

As regards Writ Petition No. 93 of 1999 filed by the Advocate General of the State of Tamil Nadu, the respondents therein have challenged the locus standi of the Advocate General to file it. From what is stated therein, it becomes clear that the writ petition is filed by him not in his personal capacity as an enlightened citizen or as an advocate interested in proper working of the Courts but in his capacity as the Advocate General of Tamil Nadu. He had appeared on behalf of the State of Tamil Nadu before the Madras High Court in the writ petitions filed by Ms. Jayalalitha and others. The State of Tamil Nadu has not filed any petition challenging the notification issued by the Central Government not it has authorised the Advocate General to do so. It is, therefore, difficult to appreciate how the Advocate General of

A Tamil Nadu could file its writ petition challenging the notification dated 5.2.1999 issued by the Central Government under Section 4(2) of the P.C. Act. Realising this difficulty in his way Mr. Shanti Bhushan, learned Senior counsel appearing for the Advocate-General submitted that the writ petitioner may be treated as an intervenor and be heard on the important questions of law which arise in this case. We are not in favour of entertaining the writ B petition filed by the Advocate General but we have permitted him to assist this Court as an intervenor only.

So far as Writ Petition No. 97 of 1999 filed by Shri M.A. Chinnaswamy is concerned, we are of the view that it does not deserve to be entertained C and, therefore, it is dismissed on that ground alone.

Briefly stated the relevant facts are as follows. Ms. Jayalalitha was the Chief Minister of Tamil Nadu during the period 1991-1996. In the General Election to the Tamil Nadu State Legislative assembly held in 1996, All India Anna Dravida Munnetra Kazhagam (AIADMK) Party lost and its D political rival the DMK Party then came into power. Many criminal cases were filed against Ms. Jayalalitha and/or her cabinet colleagues, some party MLAs and some high Government Officials under the Prevention of Corruption Act. By 26.3.1997, as many as 38 FIRS were filed alleging corruption and possession of disproportionate assets. Considering the public E importance and sensitive nature of those cases and desirability of expedient disposal of those cases on day-to-day basis, the Government of Tamil Nadu thought it necessary to appoint three Special Judges in the cadre of District Judges to try those cases exclusively. It, therefore requested the High Court of Madras for concurrence for constitution of three Additional Courts in the City Civil Court at Chennai for the said purpose and to appoint the Judges F of those Courts as Special Judges for trying those cases. After obtaining concurrence of the High Court, the State Government by its order dated 17.4.1997 constituted three additional Courts in the City Civil Court a Chennai and by the impugned notification dated 30.4.1997 appointed XIth, XIIth and XIIIth Additional City Civil and Sessions Judges as Special Judges G and specified which out of 41 cases, including the cases against Ms. Jayalalitha and/or other high public officials/servants, under the Prevention of Corruption Act shall be tried by each Special Judge. This notification was challenged by Ms. Jayalalitha and others by filing 14 separate writ petitions before the Madras High Court. In all these writ petitions the points raised were almost identical. Therefore, they were all heard together and disposed of by two H common judgments, as stated above.

Before the High Court various contentions were raised on behalf of the appellants. However, we need not refer to them all as only a few out of them have been raised before us. Briefly stated, validity of Section 3 was challenged insofar as it empowers the Government to appoint as many special Judges as may be necessary "for such case or group of cases" as may be specified by it, on the ground that thereby it confers unguided and arbitrary discretion on the Government. Neither the Act nor Section 3 contains any policy or principle for classification by the Government and, thus, it permits the Government to appoint a Special Judge to try a case against an individual and deny him a fair and equal treatment that an accused placed in similar circumstances would otherwise get. In the alternative, it was contended that the exercise of power by the State Government under Section 3 of the Act was mala fide as it was exercised with a view to victimise the political opponents who are now out of power. It was also contended that by specifying certain cases as triable only by Special Judges preciding over Courts No. XI, XII and XIII the executive has usurped the power of the judiciary and, therefore, the impugned notification dated 30.4.1997, to that extent, is invalid, being violative of Article 235 of the Constitution. In support of their contentions the appellants had placed material on record to show that in the Chennai city there were as many as 8 Special Judges on 16.4.1997 to try cases under the P.C. Act and thus there was no necessity, particularly when most of the cases were still at the investigation stage, to appoint three more Special Judges to try their cases only. On the other hand, the State Government had stated in their counter affidavits that the Courts in Chennai city were overburdened with the existing work load of cases under the P.C. Act. That during 1996 and April 1997, 31 cases were filed against the former Chief Minister, former Ministers, certain civil servants and other public servants and that total number of accused in those cases is 93 and hundreds of witnesses will have to be examined in those cases and thousands of documents will have to be proved. In Crime No. 13/96 alone, wherein former Chief Minister Ms. Jayalalitha is charge-sheeted for accumulation of wealth beyond her known sources of income, the investigating Agency had examined 900 witnesses and collected documents running into 10,000 pages. It was further stated that as the accused in all those cases held and some are still holding high political/Government posts, the State Government considering public importance and sensitive nature of those cases was of the view that those cases should be tried expeditiously as per the expectations of the law abiding citizens of this country. It was denied that the power under Section 3 was exercised mala fide for any other consideration and in this connection it was pointed out that out of 46 cases allocated under

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A the impugned notification former Chief Minister and Ministers are not involved in 18 cases and in 13 cases out of those 18 cases only officials and non-political personalities are involved. It was also stated that the establishment of three additional Courts, appointment of the Judges of those Courts as Special Judges and allocation of the 46 cases specified in the notification was B done with the approval and in consultation with the High Court of Madras and, therefore, its action was not violative of Article 235 of the Constitution. The Union Government supported the action of the government by stating that the State Government being in better position to judge the needs and exigencies of the situation has exercised the power in public interest. It also C stated that the accused of those cases form a class by themselves.

The High Court rejected the challenge to the validity of Section 3 by holding that appointment of a Special Judge does not amount to creation of a Special Court and, therefore, even when the Government appoints a Special Judge to try a case or group of cases the accused is tried by the same class D of Judges and by the same procedure, as in the case of an accused who is tried by a special Judge appointed for that area and, therefore, that cannot by itself lead to discrimination and, hence, Section 3 cannot be said to be violative of Article 14 of the Constitution, even if it is held that neither Section 3 nor the Act discloses any policy or principle for appointment of a Special E Judge for a case or group of cases. The High Court also held that the object and the scheme of the Act provides sufficient guidelines for exercising the power under Section 3 and, therefore, it is not correct to say that the discretion conferred upon the Government is unfettered, unguided and arbitrary. Liberhan, C.J. held that when a Special Judge is appointed to try a case or a group of F cases that does not result in classification and what really happens in such a case that there is categorization of persons or categorizations of cases and, thus, it is a matter of only distribution of work, for efficient working of the Court. The rationality test has no application in such cases. Padmabhan, J. further held that the point regarding validity of Section 3 virtually stands concluded by the judgement of this Court in *Kartar Singh* v. *State of Punjab,* G [1994] 3 SCC 569, wherein this Court has upheld the validity of a similar provision contained under Section 9 of the Terrorists and Disruptive Activities (Prevention) Act, 1987. The learned Judge further held that exercise of power under Section 3 has to be done in consultation with the High Court and, therefore, it cannot be said that the discretion conferred upon the Government H is unfettered, uncontrolled and absolute. The High Court also upheld the

validity of the notification as it was of the view that the appellants had failed to establish that the State Government in appointing three Special Judges for trying the cases of Ms. Jayalalitha, her cabinet colleagues and other public servants or persons holding high offices, had acted with malice-either in law or in fact. It held that the material placed before the Court clearly justifies establishment of three additional Civil Courts and appointment of three Special Judges to try those cases. The High Court also held that the allegations of mala fide were vague and persons against whom the allegations were made were not joined as parties. Moreover, in some cases which had come up before the High Court earlier for different reasons, it was observed therein that the investigation discloses prima facie case against those accused. The High Court also held that the impugned notification dated 30.4.1997 was issued by the Government after due consultation with the High Court and, therefore, it was not violative of Articles 50 and 235 of the Constitution.

The contentions raised by Mr. K.K. Venugopal, learned senior counsel appearing for the appellant Ms. Jayalalitha and other counsel appearing for the other appellants, can be briefly stated as under :-

1. Section 3(1) of the P.C. Act on a correct interpretation, permits appointment of a Special Judge for a case or group of cases only when no Special Judge has been appointed for the area or areas within which the offence under the Act has been committed.

2. If Section 3(1) is interpreted and construed otherwise, that is to mean that it also empowers the Governments to appoint a Special Judge for a case or group of cases even when there is a competent Special Judge for the area to deal with such a case or cases, then it will have to be regarded as violative of Article 14 of the Constitution, as neither Section 3 nor the Act as a whole discloses any policy or principle for deciding when a Special Judge can be appointed for a case or group of cases and, thus, it enables the Government to exercise the power in an arbitrary and discriminatory manner by picking and choosing a particular case for trial by a particular Special Judge.

3. Even if Section 3(1) is held to be valid, exercise of power by the State Government thereunder and issuance of notification dated 30.4.1997 was *mala fide* both in law and fact and, therefore, the said notification must be held to be illegal and invalid.

4. There was no valid consultation with the High Court as regards

creation of three more Courts of Additional Sessions Judges at Chennai, appointment of those three Additional Sessions Judges as Special Judges and allocation of specified cases amongst them, particularly when the decision in that behalf was not taken by the Full Court.

5. The notification issued by the Central Government in exercise of its power under Section 4(2) of the P.C. Act being legal and proper, the impugned notification dated 30.4.1997 issued by the State Government stands replaced, and the allocation of work as specified in the notification dated 5.2.1999 issued by the Central Government must be held as valid.

We will now deal with the contentions seriatim.

Re Contention No. 1:

It was submitted by the learned counsel that Section 3 empowers the Government to appoint as many special Judges as may be necessary for such area *or* areas *or* for such case or group of cases, as may be specified in the notification. He emphasised the use of the word 'or' after such area or areas and before such case or group of cases and further submitted that the power conferred upon the Government is in the alternative, that is to say, that the State Government may appoint a special Judge either for an area or areas *or* for a case or group of cases. But it cannot appoint a Special Judge for an area or areas and also appoint additionally a Special Judge for a case or group of cases within that area. The learned counsel first drew our attention to the meaning of the word 'or' contained in New Webstor's Dictionary of the English Language and the decision of the Allahabad High Court in *State of U.P.* v. *Sat Narain and Ors.*, (1951) Allahabad 218. So far as the decision of the Allahabad High Court is concerned, we are not able to appreciate how it can be of any use to the appellants as it does not throw any light on the meaning of the word 'or'. The dictionary meaning of the word 'or' is : "a particle used to connect words, phrases, or classes representing alternatives". The word 'or', which is a conjunction, is normally used for the purpose of joining alternatives and also to join rephrasing of the same thing but at times to mean 'and' also. Alternatives need not always be mutually exclusive. Moreover, the word 'or' does not stand in isolation and, therefore, it will not be proper to ascribe to it the meaning which is not consistent with the context of Section 3. It is a matter of common knowledge that the word 'or' is at times used to join terms when either one or the other or both are indicated. Section

3 is an empowering section and depending upon the necessity the Government has to appoint Special Judges for an area or areas or case or group of cases. Even in the same area where a Special Judge has already been appointed, a necessity may arise for appointing one more Special Judge for dealing with a particular case or group of cases because of some special features of that case or cases or for some other special reasons. We see no good reason to restrict the power of the Government in this behalf by giving a restricted meaning to the word 'or'. In our opinion, the word 'or' as used in Section 3 would mean that the Government has the power to do either or both the things. Therefore, the first contention raised on behalf of the appellants has to be rejected.

Re Contention No. 2.

The validity of Section 3(1) of the Act is challenged on the ground that it is violative of Articles 14 and 21 of the Constitution as it confers unfettered, unguided and absolute discretion on the Government and is thus capable of leading to abuse of power by the Government. The challenge is not to the whole of Section 3(1) but is confined to that part of the sub-section which empowers the Government to appoint special Judges "for such case or group of cases". Neither that part of the sub-section which empowers the Government to appoint special Judges to try the offences punishable under the Act nor the part which empowers the Government to appoint as many special Judges as may be necessary for an area or areas is challenged as bad. It was submitted that classification of offences or persons to be tried by a special Judge is a matter of legalative policy and that cannot be left to the executive. It was submitted in the alternative that the Act must disclose policy or principle on the basis of which such classification is to be made by the Government. According to the learned counsel neither Section 3 nor the object of the Act or any other provision of the Act indicates any policy or principle which should guide the Government in making appointment of a special Judge for a case or group of cases. Thus in absence of any policy or guidelines the Government can exercise its discretion in an arbitrary or discriminatory manner by picking and choosing persons according to its whims and caprice.

To support their contention learned counsel for the appellants heavily relied upon the decision of this Court in *State of West Bengal* v. *Anwar Ali Sarkar,* [1952] SCR 284, wherein the Constitution Bench of this Court dealing with Sections 3 and 5 of West Bengal Special Courts Act held that Section

A 5(1) which empowered the State Government to direct which offences or class of offences or cases or classes of cases were to be tried by a Special Court vested an unrestricted discretion in the State Government and as it did not disclose any policy as to when speedier trial was to be considered as necessary, it was violative of Article 14 of the Constitution, Mukherjee, J. further held B that "necessity of speedier trial is too vague, uncertain and elusive a criterion to form a rational basis for the discriminations made. The necessity for speedier trial may be the object which the legislature had in view or it may be the occasion for making the enactment. In a sense quick disposal is a thing which is desirable in all legal proceedings. The word used here is "speedier" which is a comparative term and as there may be degrees of speediness, the C word undoubtedly introduces an uncertain and variable element. But the question is how is this necessity of speedier trial to be determined? Not by reference to the nature of the offences or the circumstances under which or the area in which they are committed, nor even by reference to any peculiarities or antecedents of the offenders themselves, but the selection is left to the D absolute and unfettered discretion of the executive government with nothing in the law to guide or control its action. This is not a reasonable classification at all but an arbitrary selection.

It was submitted by the learned counsel for the appellants that the law laid down by this Court in *Anwar Ali's* case is still good law as can be noticed E from the decisions of this Court in *Hamdard Dawa Khanna* v. *Union of India,* [1960] 2 SCR 671, *In re The Special Courts Bill,* [1979] 2 SCR 476, *A.R. Antulay* v. *R.S. Nayak and Anr.,* [1988] 3 SCC 602, *A.N. Parasuraman and Ors.* v. *State of Tamil Nadu,* [1989] 4 SCC 683 and *Kartar Singh* v. *State of Punjab,* [1994] 3 SCC 569. It was also submitted by Mr. Dhavan, learned F senior counsel that conferment of discretionary power on the executive which in absence of any policy of guidelines permits it to pick and choose has always been regarded as unconstitutional, as can be noticed from the decisions of this court in *The State of West Bengal* v. *Anwar Ali Sarkar,* [1952] 2 SCR 284, *Lachmandas Kewalram Ahuja and Anr.* v. *The State of Bombay,* [1952] G 2 SCR 710 and *Dhirendra Kumar Mandal* v. *The Superintendent,* [1955] 1 SCR 224. It is not necessary to deal with all the decisions in this judgment as we are in general agreement with the principle laid down in those cases and also because we are of the view that the power conferred by Section 3(1) of the Act is not unfettered or unguided because the object of the Act and Section 3 indicate when and in under what circumstances the power conferred H by Section 3 has to be exercised.

As rightly submitted by the learned Attorney General on the basis of the decision of this Court in *Kathi Raning Rawat* v. *The State of Saurashtra,* [1952] SCR 435, policy can be gathered from the preamble, the provisions of the enactment and other surrounding circumstances. The following observations from the decision of this Court in *Re Special Courts Bill, 1978* [1960] 2 SCR 646, to which our attention was drawn by the learned Attorney General are also useful while considering the challenge that the provision of law is *ultra vires* Article 14 of the Constitution :

> "Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of Article 14 must be determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of law in the particular circumstances is necessary."

The learned Attorney General also drew our attention to the following observations made in *Kedar Nath Bajoria* v. *State of West Bengal,* [1954] SCR 30.

> "The object of passing this new Ordinance is identically the same for which the earlier Ordinance was passed and the preamble to the latter, taken along with the surrounding circumstances, discloses a definite legislative policy which has been sought to be effectuated by the different provisions contained in the enactment."

In *Jyoti Prasad* v. *The Administrator for the Union Territory of Delhi,* [1962] 2 SCR 125, this Court has held that :

> "such guidance may thus be obtained from and afforded by (a) the preamble read in the light of the surrounding circumstances which necessitated the legislation, taken in conjunction with well known facts of which the Court might take judicial notice or from which it is apprised by evidence before it in the form of affidavits, Kathi Raning Rawat's case being an instance where guidance was gathered in the manner above indicated (b) or even from the policy and purpose of the enactment which may be gathered from other operative provisions applicable to analogous or comparable situations or generally from the object sought to be achieved from the enactment."

A relevant aspect which is also required to be borne in mind in this behalf is, as pointed out in *Jyoti Prasad's* case (supra) :

A "the mere fact that the legislation is skeletal, or the fact that a discretion is left to those entrusted with administering the law, affords no basis either for the contention that there has been an excessive delegation of legislative power as to amount to an abdication of its functions, or that the discretion vested is uncanalised and unguided as to amount to a carte blanche to discriminate. The second is that if the power or discretion has been conferred in a manner which is legal and constitutional, the fact that Parliament could possibly had made more detailed provisions, could obviously not be a ground for invalidating the law."

Therefore, what we have to consider is whether the Act discloses a policy and lays down a guideline in accordance with which the discretion conferred by Section 3 is to be exercised by the Government. It is not in dispute that one of the objects of the Prevention of Corruption Act is to provide speedy trial for offences punishable under the Act. In the statement of objects and reasons for enacting this Act it is stated that "in order to expedite the proceedings provision for day-to-day trial of cases ... have also been included". Sub-Section (4) of Section 4 provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973 a special judge shall, as far as practicable, hold the trial of an offence on day-to-day basis. Section 5 provides that the special judge may take cognizance of an offence without the accused being committed to him for trial and in trying the accused persons shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 for the trial of warrant cases by Magistrate. Sub-Section (4) of Section 5 further provides that in particular and without prejudice to the generality of the provisions contained in sub-section (3) the provisions of Sections 326 and 475 of the Code of Criminal Procedure, 1973 shall so far as may be, applied to the proceedings before a special judge and for the purpose of the said provisions the special judge shall be deemed to be a Magistrate. These provisions sufficiently indicate the intention of the legislature and also the object of the Act that the cases of corruption shall be tried speedily and completed as early as possible. This is the policy of the Act and it underlies Section 3 also. Therefore, while exercising the power under Section 3 the Government shall have to be guided by the said policy.

In order to achieve the object of the Act, how many special judges would be required in an area could not have been anticipated by the legislature as that would depend upon various factors. The number of judges required for an area would vary from place to place and from time to time. So also requirement of a separate special Judge for a case or group of cases in

addition to the area special judge who could have otherwise dealt with that case or those cases would also depend upon various variable circumstances. Therefore, no fixed rule or guideline in that behalf could have been laid down by the legislature. The legislature had to leave it to the discretion of the Government as it would be in a better position to know the requirement. Further, the discretion conferred upon the Government is not absolute. It is in the nature of statutory obligation or duty. It is the requirement which would necessitate exercise of power by the Government. When a necessity would arise and of what type being uncertain the legislature could not have laid down any other guideline except the guidance of 'necessity'. It is really for that reason that the legislature while conferring discretion upon the Government has provided that the Government shall appoint as many special judges *as may be necessary*. The words 'as may be necessary' in our opinion is the guideline according to which the Government has to exercise its discretion to achieve the object of speedy trial. The term 'necessary' means what is indispensable, needful or essential. On the question as to whether the term 'necessary' has a precise meaning and connotation or is vague and nebulous, the learned Attorney General drew our attention to the decision of the Gujarat High Court in *Jayantilal Purshotamdas* v. *State,* (1970) 72 GLR 403. While construing the meaning of the words 'necessary' and 'expedient' used in Section 5(1) of the Bombay Land Acquisition Act, 1948 the Gujarat High Court observed that if the word is read in isolation it is possible that it introduces such variety of shades and considerations that it would be difficult to say with any definiteness as to whether a particular thing or act could be said to be necessary or expedient or not. It further held that the term 'necessary' has a precise meaning and connotation and there is nothing vague and nebulous about it. The High Court further observed that the word used in an enactment cannot be read in isolation and it has to be read in the context of the other parts of the provisions of the law in which it appears.

Something more. The legislature has enacted the Prevention of Corruption Act and provided for speedy trial of offences punishable under the Act in public interest as it had become aware of rampant corruption amongst the public servants. While replacing the 1947 Act by the present Act the legislature wanted to make the provisions of the Act more effective and also to widen the scope of the Act by giving a wider definition to the term 'public servant'. The reason is obvious. Corruption corrodes the moral fabric of the society and corruption by public servants not only leads to corrosion of the moral fabric of the society but is also harmful to the national economy and national interest, as the persons occupying high posts in Government by

misusing their power due to corruption can cause considerable damage to the national economy, national interest and image of the country. It is in the context of public interest that we have to construe meaning of the word 'necessary' appearing in Section 3. Considering the object and scheme of the Act and the context in which it is used it would mean requirement in public interest and cannot be said to be so vague as not to provide a good guideline. Thus the exercise of discretion by the Government under Section 3 has to be guided by the element of requirement in public interest.

Again conferment of such wide discretion by Section 3 is not likely to lead to discrimination either in the matter of the Court by which the accused is to be tried or the procedure by which he is to be tired. Whether he is tried by a special judge for the area or a special judge appointed for a case or group of cases he will be tried by a judge of the same class and by the same procedure. We have already pointed out earlier that appointment of a special judge to try a particular case or group of cases is not the same thing as establishing a special court for trying a case or cases. The accused will be tried by a special judge who is also sessions Judge appointed under the Code of Criminal Procedure, as in the case of an accused tried by the area Special Judge. The procedure to be followed by a special judge whether he is an Area Special Judge or judge appointed specially for a case is the same. Thus the accused is not exposed to a different treatment as regards the court by which he is to be tried or the procedure to be followed in his case.

For all these reasons we are of the view that the discretion conferred by Section 3 upon the Government is not unfettered or unguided and, therefore, challenge to the validity of Section 3(1) of the Act must fail.

We may refer to three decisions of this Court which have a bearing on this point, in *M.K. Gopalan* v. *State of M.P.*, [1955] 1 SCR 168, this Court held that "Section 14 of the Criminal Procedure Code in so far as it authorises the Provincial Government to confer upon any person all or any of the powers conferred or conferrable by or under the Code on Magistrates of the first, second or third class in respect of particular cases and thereby to constitute a Special Magistrate for the trial of an individual case, does not violate the guarantee under Article 14 of the Constitution as the Special Magistrate in the present case had to try the case entirely under the normal procedure and no discrimination of the kind contemplated by the decision in *Anwar Ali Sarkar's* case (supra) arose in the present case. A law vesting discretion in an authority under such circumstances cannot be discriminatory and is therefore, not hit by Article 14 of the Constitution." In *Asgarali*

Nazarali Singaporawalla v. *The State of Bombay,* [1957] SCR 678 a Constitution Bench dealing with the Criminal Law Amendment Act, 1952 which provided for the trial of all offences punishable under Sections 161, 165 and 165A of the Indian Penal Code or sub-section (2) of Section 5 of the Prevention of Corruption Act, 1947 exclusively by special judges held that "bribery and corruption having been rampant and the need for weeding them out having been urgently felt, it was necessary to enact the measure for the purpose of curtailing all possible delay in bringing the offenders to book." This Court upheld the constitutional validity of Section 6 of the Criminal Law Amendment Act, 1952 which provided for the appointment of Special Judges and empowered the State Governments by notification in the Official Gazette to appoint as many Special Judges as may be necessary. In *Jagannath* v. *State of Maharashtra,* [1963] Supp. 1 SCR 573, the power of the Government to appoint a qualified person as a special Magistrate and to confer upon him powers conferrable upon a Judicial Magistrate in respect of a particular case or a particular class or classes of cases or in regard to cases generally in any local area was challenged. The notification issued in that behalf by the Government was challenged on the ground that Section 14 which empowers the Government to issue such a notification infringes Article 14 of the Constitution. The said contention was rejected by the Court following its earlier judgment in *M.K. Gopalan's* case (supra).

Re Contention No. 3

It was strenuously contended on behalf of the learned counsel for the appellants that in issuing the impugned notification dated 30.4.1997 the Government has acted mala fide-both in law and fact. It was submitted that the Government has issued the said notification with a view to target the political opponents and not because any real or genuine necessity was felt for the trial of cases specified in the notification by separate special judges.

It was submitted by Mr. K.K. Venugopal, learned senior counsel, that there were many area special judges in the city of Chennai and the necessity of having more special judges in the city was satisfied by the order dated 16.4.1997 and thus there was hardly any further necessity for appointment of three special judges for trying the cases specified in the notification and which were mainly against the Chief Minister and her cabinet colleagues or public officials. He also submitted that many older cases were pending in the courts of special judges in the city of Chennai. if speedier trial of the corruption cases was the genuine concern of the Government then it should have appointed either more special judges for the whole area of Chennai or should

A have picked up those old cases for being tried by separate special judges. He also submitted that necessity for exercise of power under Section 3(1) should have been felt in respect of cases which were few years old and not for cases wherein FIRs or charge-sheets were filed only some time before. Mr. P.P. Rao, learned senior counsel, also appearing for Ms. Jayalalitha submitted that if all cases pending against high public officials had been included in the B notification then it would have been a different matter but as the appointment of special judges by the notification is only in respect of the cases against Ms. Jayalalitha and her cabinet colleagues and other co-accused the same should be regarded as actuated by malice. Mr. Rajiv Dhawan, appearing for some of the appellants, submitted that the impugned notification clearly C discloses the intention of the Government of picking and choosing cases and political targetting and cited the following decisions to support his contention that such exercise of power has been held as unconstitutional :

1. *State of West Bengal* v. *Anwar Ali Sarkar,* [1952] SCR 284.

D 2. *Lachmandas Kewalram Ahuja* v. *State of Bombay,* [1952] SCR 710.

3. *Dhirendra Kumar Mandal* v. *The Superintendent and Remembrancer of Legal Affairs to the Government of West Bengal,* [1955] SCR 224

E 4. In *Re. Special Courts Act,* 1978 [1979] 2 SCR 476.

5. *V.C. Shukla* v. *State,* [1980] 2 SCC 665.

Mr. Tulsi, learned senior counsel, appearing for some of the appellants challenged the said notification on the ground that the government has exercised its power under Section 3 of the Act out of malice. These F submissions were raised by the appellants before the High Court and the High Court has elaborately dealt with the same and after giving good reasons rejected all of them. The High Court has referred to the data which was brought on record to show that large number of cases were pending before the special courts in the city of Chennai. Moreover, the Courts of special G Judges were also acting as Additional Sessions Courts and were thus overburdened with the ordinary criminal cases also. We have also referred to some material placed in this behalf by the State before the High Court in the earlier part of our judgment. In view of the material which has been brought on record it cannot be seriously disputed that the cases which are specified in the notification being of complex nature will not be over within a period H of about 10 years if they are left to be tried by the area special judges.

Moreover as pointed put by this Court in *Re. Special Courts' Bill 1978,* [1979] 2 SCR 476, "speedy trial of offences of a public nature committed by persons who have held high public or political offices in the country and others connected with the commission of such offences is the heart of the matter." Thus the speedier trial of corruption cases against public servants/ officers holding high Government officials being a relevant consideration it cannot be said that by appointing separate special judges for speedier trial of those cases the Government has either singled out cases against its political opponents or that the power has been exercised by the Government for political targetting. The appellants have not brought on record any material to show that the cases of similarly situated politicians or public servants/ officials were also pending and they have been left untouched for being tried by area special judges.

As we agree with the reasons given by the High Court for rejecting all the submissions made in this behalf by the learned counsel for the appellants we do not think it necessary to deal with them any further. We may only state that no factual averments were made by the appellants in the writ petitions to make out a valid case of malice in fact. We may also state that the material on record justified the exercise of power by the Government and, therefore, the impugned notification cannot be said to be either discriminatory or violative of Article 14.

Re Contention No. 4

Regarding this contention also no detailed discussion is necessary as the High Court has dealt with this contention elaborately by referring to the whole correspondence that took place between the Government and the High Court. The proposal to establish three more courts of Additional Sessions Judges and to appoint them as Special Judges for trying the cases specified in the notification was approved by the High Court. Initially, the proposal was examined by a committee of judges appointed by the High Court in that behalf and thereafter the Full Court had approved the same. Even the posting of Sessions Judges as special judges for those three Additional courts was approved by the Full Court. Only the allocation or distribution of those cases amongst those three Special Judges was done by the Acting Chief Justice. That being a purely administrative Act could have been performed by the Acting Chief Justice alone and even if it is considered as an irregularity it is not of such a magnitude as would require us to invalidate that part of the notification whereby cases have been allocated to those three special judges.

A Therefore , we reject this contention also.

Re Contention No. 5

It was contended by the learned Attorney General and also by the learned counsel for the appellants, defending exercise of power by the Central B Government under Section 4(2) of the Act and issuance thereunder of the impugned notification dated 5.2.1999 that if in a given area there are more special judges than one, then it is the exclusive power of the Central Government to specify which cases shall be tried by which special judge. On the other hand it was contended by Mr. Shanti Bhushan and Anil Dewan, C learned senior counsel, appearing for the Advocate General of Tamil Nadu and VOICE respectively that this power of the Central Government has to be read consistently with Section 3 of the Act.

Section 3(1) empowers the Central Government or the State Government to appoint as many special judges as may be necessary for such area or areas D or for such case or group of cases as may be specified in the notification issued in that behalf to try the offences punishable under the Act. Section 4(2) provides that offences specified in sub-section (1) of Section 3 shall be tried by special Judges only. Sub-section (2) of Section 4 then provides by which special Judges the offences under the Act are to be tried. It reads as under :

E

> "4(2). Every offence specified in sub-section (1) of Section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central F Government."

Whereas Section 3 empowers both the Central Government and the State Government to appoint special Judges, sub-section (2) of Section 4 authorises only the Central Government to specify, where there are more G special Judges than one for an area, by which special Judge the offence shall be tried. It was submitted that in the city of Chennai there were more special Judges for that area and, therefore, when three more special judges were appointed only the Central Government could have at that time specified which special Judge shall try which offence.

H Section 4(2) consists of three part. It first provides that every offence

specified in sub-section (1) of Section 3 shall be tried by the special Judge for the area within which it was committed. This is consistent with the general principle that the Court does not ordinarily have extra territorial jurisdiction. But as Section 3 empowers both the State Government and the Central Government to appoint a special Judge for a case or group of cases, a provision had to be made to give effect to power and thereafter it further provides that where a special Judge is appointed for a case, then it will have to be tried by a special Judge. In the absence of such a provision the very purpose of appointing a special Judge for a case will get frustrated. The third part deals with a situation, which would arise when more special Judges than one are appointed for a particular area. In that situation a question may arise as to by whom the cases are to be allocated amongst them. It was submitted by the learned Attorney General that when a special Judge is appointed for a case then obviously that case will have to be tried by the special Judge appointed for that case. But he submitted that, significantly sub-section (2) of Section 4 does not refer to 'group of cases' and that indicates that there is no exclusivity of jurisdiction of such a special Judge and consequently the power conferred on the Central Government to allot cases under Section 4(2) would apply to cases tried by such special Judges. He submitted that in such a situation they should really be regarded as Area Special Judges. We are unable to appreciate this submission. Very probably the third part takes care of such a situation. On applying the well known Principle of interpretation of Statute that singular includes plural unless the context requires otherwise, it may be held that the word 'case' in the second part of sub-section 2 includes 'cases' and, therefore, when a special judge or judges is/are appointed for a case or group of cases then only that special judge or those special judges can hear those cases, otherwise the very purpose of making such appointment or appointments would be frustrated. However, we need not go into this larger question as we are of the view that the power conferred upon the Central Government under Section 4(2) is also to be exercised if that becomes 'necessary'. The same guideline contained in Section 3(1) must apply while exercising power under Section 4(2) also. The trial of cases specified in the impugned State notification was going on since May, 1977 and no necessity had arisen till February, 1999 to exercise the power of allocation in respect of those cases. The Central Government has not placed any material before us to show why it become necessary for it, after such a long time, to make reallocation of cases to be tried by special judges in the city of Chennai. It has pleaded only its power to do so. The allocation was made in consultation with the High Court. Really, the allocation amongst the three special judges can be said to have been done by the High Court though the formal notification

A in that behalf was issued by the State Government. The Central Government issued the impugned notification, while the SLPs challenging the judgment of the High Court was pending in this Court. The Central Government has failed to establish the necessity of issuing the impugned notification dated 5.2.1999, the same is held to be not in accordance with Section 4(2) of the Act. It was uncalled for at that stage and, therefore, it has to be regarded as bad.

B

In the result, all the appeals - except the appeal filed by VOICE [arising out of SLP (Civil) No. 2805 of 1999] are dismissed. The appeal filed by the VOICE is allowed and the impugned notification No. 371/69/98-A.V. III (II) dated 5.2.1999 issued by the Central Government is quashed and set aside. C No separate orders are called for on Writ Petition No. 93 of 1999 and 97 of 1999 and they stand disposed of accordingly.

S.M.

All appeals dismissed filed by J and her colleagues and Appeal allowed filed by the VOICE.

D