Karnataka High Court State Of Karnataka And Others vs B. Krishna Bhat And Others on 14 March, 2000 Equivalent citations: ILR 2001 KAR 2030, 2001 (2) KarLJ 1 Author: B R Y. Bench: Y B Rao, A Bhan, R R Farooq, Chandrashekaraiah JUDGMENT Y. Bhaskar Rao, CJ. 1. An extraordinary situation arose in the context of the following three circumstances: (a) Passing of series of orders by a learned Single Judge of this Court (M.F. Saldanha, J.) between September 1997 and July 1999 in public interest, after the issue of Notification dated 8-7-1997 providing that all writ petitions of the nature of Public Interest Litigation shall be listed before a Division Bench. (b) Passing of two orders of reference, suo motu, by the learned Judge questioning the correctness of the Notification dated 8-7-1997 under which the Chief Justice assigned writ petition (PIL) to Division Bench and requesting reconsideration of the decisions of the Division Bench in A.V. Amarnathan and Another v Registrar (Judicial), High Court of Karnataka, Bangalore and Another, upholding the said Notification and the decision of the Full Bench in Narasimhasetty (deceased) by L.Rs v Padmasetty and requesting that the matter be referred to another Full Bench; and (c) Filing of a Public Interest Litigation praying that all orders passed by the learned Single Judge in public interest matters after 8-7-1997 be set aside as being illegal and without jurisdiction. Therefore, it was directed by the first of us (the Chief Justice) that all connected matters be placed before a Full Bench of Five Judges. As all these cases are interlinked, they are heard together and disposed of by this common order. We have heard not only the learned Counsel for the parties, but other learned Counsel who wanted to make submissions supporting the reference. 2. Before referring to the questions that arise for consideration in these cases, we find it necessary to set out the facts of each of these cases. As the rank of parties differ, we have referred to them by name. The following abbreviations are used in this order: "M.V. Act" for Motor Vehicles Act, 1988; "C.M.V. Rules" for Central Motor Vehicles Rules, 1989; "H.C. Act" for Karnataka High Court Act, 1961; "State" for State of Karnataka; "K.E.B." for Karnataka Electricity Board, now Karnataka Power Transmission Corporation Limited; "BWSSB" for Bangalore Water Supply and Sewerage Board; "BCC or Corporation" for Bangalore Mahanagara Paliko (Bangalore City Corporation); and "B.D.A." for Bangalore Development Authority. I. W.P. Nos. 26353 and 26354 of 1997: 3. B. Krishna Bhat, the petitioner, claims to be the owner of two motor vehicles. According to him, the said two vehicles are maintained in good condition; but as the condition of the roads in the State and in particular in Bangalore, are bad, the carburettor setting of the vehicle engines get altered due to constant jerks; and such change in carburettor setting has a consequential bearing on the levels of emission of smoke from the motor vehicle. He contends that the State's obligation to maintain roads in a proper manner has a direct nexus to the emission levels from motor vehicles; and therefore unless and until the roads are maintained properly by the State and the Local authorities, the Officers of the Transport and Police Department should not inspect the motor vehicles to find out whether the emission levels are within the limits prescribed nor penalise the motor vehicle owners for excessive emissions under the provisions of the M.V. Act and the C.M.V. Rules.

He also contends that large amounts are being collected as tax on motor vehicles, but they are not used for improving the roads; and such tax should exclusively be used for improving and maintaining the roads in the State. He, therefore, filed these petitions (W.P. Nos. 26353 and 26354 of 1997) on 20-9-1997 seeking a direction to the Commissioner for Transport in Karnataka and the Director General of Police and the Officers working under them not to intercept his two vehicles bearing Registration Nos. CAC 65 and KA05 M 8698 under the M.V. Act and the C.M.V. Rules for pollution checks until the Road conditions in the City of Bangalore are improved. 4. The petitions came up for preliminary hearing on 22-9-1997 before M.F. Saldanha, J. Mr. Bhat was permitted to amend the petition to include a second prayer, that is, a direction to the State, "for proper utilisation of the revenue for road maintenance by corresponding utilisation of the revenue collected". When the said petitions were filed, only the State, the Commissioner for Transport in Karnataka, Director General of Police and Bangalore Mahanagara Palike were arrayed as the respondents. Subsequently, with the permission of the Court, but without filing any application for impleading, Bangalore Development Authority, Bangalore Water Supply and Sewerage Board, Karnataka Electricity Board and Bangalore Telecom District were impleaded as respondents 4 to 8. However, the petitions were not amended to incorporate any averment referring to the said authorities. No relief is also sought against them. 5. The learned Single Judge has issued a series of orders purporting to be in public interest (alien to pleadings and prayer in the petition), against the State, Commissioner of Transport, Police, B.C.C., B.D.A., B.W.S.S.B. and K.E.B. between 22-9-1997 and 30-7-1999. The substance/purport of the said interim orders is given below: Sl. No. Date of the interim order Substance/purport of the interim order 1. 22-9-1997 Suggestion to State Government to set up a Roadways Corporation with expertise in con-struction and maintenance of proper roads. Recommendation that all local bodies should publish in regard to public works, the names of officers in charge, the names of contractors, the value of the work and the time-frame for completion of the work, so as to ensure quality of work and to enable the public to have information about the persons to be held accountable for any lapses. 2. 21-10-1997 Direction to the Corporation: (i) to publish in the local media division-wise particulars of the engineers in charge of the road maintenance, names of the contractors engaged for road maintenance, the de-scription of work undertaken and the amount spent, for the quarter ended 30-9-1997; (ii) to disclose the amount allocated for road lighting during the previous year and the current year along with the names of officers in charge of road lighting Department. (iii) to replace poor and inefficient street lights with power efficient bulbs having better output; (iv) to submit a report to the Court with regard to the action taken. 3. 18-11-1997 A direction to engineers of the Corporation to survey the roads within their respective jurisdiction and undertake the task of filling all potholes and making even the road surfaces within 42 days and a direction to the Chief Engineer of the Corporation to personally ensure that the Court directions are carried out. Direction to the Secretary to Government, Urban Development Department to direct all local bodies (Municipal Corporations and

Municipalities) to immediately survey all new constructions in respect of which plans have been submitted and which are under construction and ensure that no completion certificate or occupation certificate is issued where there is violation of building bye-laws or failure to provide adequate parking space and to take corrective measures by directing demolitions or alterations/modifications of the constructions to ensure compliance with bye-laws; and to direct all Municipal Corporations and the Municipalities to compile the names of engineers who are responsible for the sanction, supervision and approval of everyone of the constructions with a direction that they will be personally held responsible for any breach or cover up. A suggestion to Corporation to identify different areas for constructing multi-storeyed parking lots for vehicles and also encourage private developers to undertake parking lot schemes. 4. 2-12-1997 Grant of oral request of Counsel for the petitioner to implead B.D.A. as a respondent and direction to Sri R.S. Hegde, Counsel for B.D.A. to take notice. Appointment of Sri Bharathi Nagesh, Advocate, as Court Commissioner to survey select areas to be pointed out by the petitioner and report whether the road repairs in those areas were done in a proper manner or with sub-standard material on account of collusion between the engineers and contractors of the Corporation. The Commissioner of Corporation directed to instruct the Corporation engineers to inform the contractors that no sub-standard work would be tolerated and that the High Court has directed legal action against the contractors and employees of the Corporation for sub-standard work. Direction to the Corporation to ensure that defects in road lighting in the City are rectified and improved and also take steps to prevent loss, damage or theft of light fixtures. Reiteration of direction to inspect all new constructions and ensure that they are in total compliance of laws and building regulations. 5. 16-12-1997 Direction to Corporation to complete the work of replacing non-working light fixtures within one month and improve the general street lighting conditions by the end of the financial year. Reiteration of directions to take action against constructions in violation of Building Bye-laws and ensure adequate provision for parking. 6. 27-1-1998 Direction to BDA to look into the complaints regarding maintenance of roads (in the areas falling within its jurisdiction). The Chief Engineer of Corporation directed to obtain reports within ten days from the respective engineers in regard to areas where the road conditions are bad. Direction to Corporation to prevent illegal dumping of building materials and debris on the roads and levy of penalty of Rs. 5,000/- on those who indulge in such activity. Direction to Corporation to ensure that its engineers fill up and repair the roads after road cutting within 3 days, in their respective areas. 7. 20-2-1998 Fine of Rs. 2001/- levied on the Corporation, on the complaint of Gp. Capt. A.M. Menezes (retired), that there was negligence on the part of the concerned Authority in keeping the roads in a safe and usable condition with a direction to recover it from the officer who ought to have ensured that the said road was in a safe condition. BWSSB, KEB and Bangalore Telecom District were directed to be impleaded as respondents 6 to 8 and their Counsel were directed to take notice. Direction issued to all the Health Officers of the Corporation to compile a list of hotels, eating houses and other establishments which are responsible for dumping garbage and food pack-

aging material, etc., on the roads and to direct such establishments to collect their refuse/garbage in garbage bags/packets and deliver them to the Corporation staff at prescribed times and places and to levy a penalty of Rs. 1,000/- for each violation by such establishments and also to suspend their licences forthwith, for violations. Direction to Corporation for collection of garbage everyday and ensure that there is no clandestine dumping of garbage. Direction to Horticulture- Department of the Corporation and the Horticulture Department of the State Government to ensure that disposal pits are constructed in parks and gardens with proper covers within six months for dumping biodegradable waste and use wormiculture. Direction to Corporation to publish in local media every 15 days for six months, appeals to residents and establishments to set up small wormiculture pits and put biodegradable refuse in such pits. 8. 6-3-1998 6-3-1998 Direction to the Corporation to identify areas where the road repairs are required and complete the same by 31-3-1998. 9. 27-3-1998 Suggestion to the Corporation and KEB to evolve some practical solution to the problem of damage to roads by frequent uncoordinated digging for laying of cables/pipes. 10. 12-6-1998 Direction to KEB and the Corporation to follow the guidelines issued in the said order in regard to road cutting and prompt filling up such road cuttings after laying the lines and fixing of personal responsibility in the event of delay in filling up the pits/road cutting areas. Direction to Corporation and Horticulture Department to ensure complete lighting of parks by 15-7-1998 and submit a compliance report. Appointment of Sri M.S. Bhagwat, Advocate, as Commissioner to go round the areas pointed out by the petitioner and his Counsel and submit a report in regard to bad condition of roads on 3-7-1998. 11. 3-7-1998 BDA directed to take action on the Commissioner's Report on condition of roads. 12. 24-7-1998

Direction to the Chief Engineer (Projects) and Chief Engineer (Maintenance) of BWSSB to attend to serious pollution problem in Cubbon Park by installing a sewage treatment plant.

Direction to Corporation to repair the three small trenches in Cubbon Park.

13. 21-8-1998
    (Order A)

Direction to Chief Engineers of Corporation to forthwith ensure that immediate steps are taken for repairing and resurfacing the city roads.

14. 21-8-1998 (Order B)

Approval of the Scheme/Project for installation of small sewage treatment plant in Cubbon Park and other areas and suggestion to speedily implement such scheme.

15. 11-9-1998
    (Order

A)

Direction to BWSSB to ensure that everyone of leakage points in the areas pointed out by Mr. Krishna Bhat should be repaired and that the engineering staff of BWSSB should survey the specified areas and identify the leakages and rectify them within 60 days. BWSSB and Telecom Department put on notice that if there is indiscriminate digging of roads, the Court will impose rigorous penalty of Rs. 10,000/- per day for each incident. The Corporation directed to take steps to find out long-term solution for the safety of the citizens who use the roads. 16. 11.9.1998 Order (B) Direction to BWSSB to take up sewage treatment/recycling plants on top priority basis. Direction to Transport Commissioner to ensure that before 31-12-1998 every single vehicle running in the State has been checked and found to conform to pollution control requirements. 17. 20-10-1998 Order (1) Directions to Deputy Commissioner of Police (Traffic) to bring to the notice of all vehicle owners not to use main beams of headlights or dazzling headlights within the city limits and to mark lanes and traffic stops properly and ensure that vehicle follow the lane system and also stop at the traffic lights and to levy spot fine, for any violation. 18. 20.10.1998 Order (2) Directions to the State Government and Transport Authorities to achieve zero percent default by 31-12-1998 in regard to pollution violation and to take stringent steps to punish those who adulterate petrol, diesel, etc. and to streamline the process of issue of licences and renewal of licences to motor vehicles. 19. 20.10.1998 Order (3) Directions to Corporation and BDA to commence without fail by 1-11-1998 the work of repairing, restructuring and resurfacing of roads and also publish in the press (both in Kannada and English) the list of roads that are going to be repaired, the contractors who had been entrusted with the said work, and the amount that was allotted for such work. Further direction to hold the engineers personally liable for non-completion or defective completion of work and to display at each work site the name of the engineer responsible for the work, the names and addresses of the contractors, the valueof the work and the commencement date and due date of completion. 20. 20-10-1998 Order (4) Direction to BWSSB to cover up all excavations in Cubbon Park Area. 21. 9-11-1998 Direction to Government Advocate to file an affidavit of the Government indicating precisely the steps to be taken to safeguard the life, safety and welfare of citizens who use the roads in Bangalore. 22. 1-12-1998 Direction to Corporation to ensure road repairs and resurfacing. Direction to BWSSB to ensure that the sewage treatment plant in Cubbon Park is commenced within weeks and is completed in priority basis. Direction to Traffic Department to draw up comprehensive traffic management plan. Direction to the Horticulture Department to erect gates all round Cubbon Park not later than 10-1-1999, 23. 11-1-1999 Order (a) Direction to Corporation to ensure better road conditions and hold its staff personally responsible for any deficiencies and to dismiss engineers colluding with contractors. Direction to the Commissioner of Corporation to instruct each engineer of the Corporation to replace the kerb stones and align them properly and maintain the sidewalks at a even level and that if any member of public is injured by use of the sidewalks, the negligent officers

will be held responsible for payment of compensation. 24. 11-1-1999 Order Steps taken in regard to pollution control were noted with a direction to keep up the good work and ensure 100% compliance regarding control of pollution by vehicles. 25. 11-1-1999 Order (c) Direction to Police Department to provide each constable with a diary to note the particulars of vehicle which violate traffic rules and to ensure that adequate policemen are on duty during nights. Secretary, Home Department directed to file affidavit in regard to steps taken to implement the rules in force in regard to roads and to bring semblance and order in traffic management. 26. 11-1-1999 Order (d) Direction to the Corporation and BWSSB to clean up Ulsoor lake completely and remove the water hyacinth within 60 days. The" heads of the said two authorities directed to report compliance within two months. 27. 11-1-1999 Order (e) Direction to Horticulture Department to prevent theft and pilferage of trees and bamboos from Cubbon Park and other parks with a warning that if the directions are not complied within 10 days, the Court will take stringent corrective action. 28. 3-2-1999 The State Government directed to monitor the work ethos of the Traffic Constables and also monitor implementation of the several orders. 29. 15-2-1999 Order (a) Corporation directed to rigorously check and control illegal constructions and dumping of debris. The Bangalore Metropolitan Task Force directed to keep a watch and impound all vehicles indulging in dumping of debris and also issue a press release calling for information relating to dumping in parks and to take preventive steps. The Corporation directed to take action on a complaint by Mrs. Sheru Pithawala (that she sustained fractures on account of bad maintenance of the footpath) and required to show cause why it should not be required to reimburse losses suffered by citizens as a consequence of the negligence of the Corporation and its officials in maintaining the roads and sidewalks. State Government directed to ensure that unleaded petrol is progressively supplied and leaded petrol is totally discontinued within one year. 30. 15-2-1999 Order (b) The State Government directed to expedite the process for sanction for the sewage recycling plant for Cubbon Park, so that it can become operative in eleven months. 31. 15-2-1999 Order (c) Direction to Corporation in regard to garbage disposal, collection of garbage and levy of fine for violations. 32. 15-2-1999 Order (d) Direction to Corporation to remove encroachments upon Cubbon Park forthwith. Direction to Commissioner of Corporation to personally ensure investigation against officers responsible for permitting encroachments in Cubbon Park. 33. 15-2-1999 Order (e) Directions to Secretary to Government Transport Department to issue directions to Police and Transport Authorities: (i) to verify the road-worthiness of every maxi-cab within two months and also ensure that they have insurance; (ii) take steps to stop persons using other than inside of the maxi-cab for travelling and to ensure that the door is kept closed; (iii) to carry out frequent checks to prevent driving under the influence of alcoholic drinks and ensure that Drivers have a minimum of two years accident free record; (iv) to take steps against rash and negligent drivers; (v) to ensure that vehicles are not registered in benami or bogus names and to impose penalty on vehicles carrying more than permitted number of passengers. Directions to Government to take action to prevent adulteration of fuel

used in auto-rickshaws and reduce the noise levels of autorickshaws; and suggest to the autorick-shaw owners the use of gas instead of petrol. Direction to Auto Drivers Unions to bring to the notice of its members that their driving styles and their behaviour requires drastic improvement. 34. 19-3-1999 Order (a) Direction to Corporation: (i) to suggest ways and means of improving and beautifying Cubbon Park; (ii) to take Indemnity bonds instead of Bank Guarantees from contractors executing works, towards earnest money and security deposit; (iii) to look into a specific complaint that large structure in a residential area in Koramangala is being used for commercial purposes. 35. 19-3-1999 Order (b) Directions to Corporation to save citizens from lung cancer that may be caused by burning of garbage: (i) to prevent burning of garbage and notify citizens that any one found burning garbage will be fined Rs. l.OOO/-; (ii) to monitor the records of garbage collections and prevent misappropriation of money spent for garbage collection and disposal; (iii) to request police to keep a look out for persons burning garbage and take action; (iv) to prevent building contractors from dumping debris. Direction to Horticulture Department to complete the work of erecting gates and paving sidewalks in Cubbon Park and also to dig pits to plant saplings. 36. 31-3-1999 Order (a) Direction to Corporation to monitor the complaint about unauthorised deviation in construction by Sipani Trust in Koramangala and use of the said building situated in a residential area for non-residential purpose. 37. 31-3-1999 Order (b) Direction to Corporation to pay Rs. 30,000/- as compensation to Mrs. Sheru Pithawala, for the injury allegedly sustained by her on account of sidewalks in Bangalore being in a unsafe condition. 38. 31-3-1999 Order (c) (i) Direction to Horticulture Department to prevent fires and to prevent smoking in Cubbon Park, Lalbagh and other parks and to start security arrangements by ex-servicemen in Lalbagh/Cubbon Park from 1-5-1999; (ii) Direction to Government to prohibit smoking within Cubbon Park, Lalbagh and other park premises and to penalise anyone possessing matches or other material used for starting fire; (iii) Direction to Forest Department to prevent fires in forests and prohibit persons from smoking or possessing fire causing substances in forest areas; (iv) Direction to Government to take up massive tree plantation and greening programme in L.R.D.E. Musical Fountain Complex; (v) Direction to Horticulture Department not to credit the earnings from Musical Fountain Complex to the Treasury as per Government directions, but retain the same and use it for development of the area. 39. 31-3-1999 Order (d) Directions to Government to take action in regard to disposal of Hospital wastes and to totally ban on throwing Hospital wastes in any public or common area and to introduce incinerators in big Hospitals; and to transport waste from small Hospitals to Corporation incinerators. 40. 31-3-1999 Order (e) Direction to Corporation to enquire into the circumstances under which 17,000 tonnes of debris were dumped into the Nitgiri Park and take disciplinary action against its employees who were responsible. 41. 31-3-1999 Order (f) Detailed directions to State Government and Transport Department in regard to traffic noise pollution, fuel adulteration, lane system, one way systems, prevention of driving with dazzling headlights and road safety. 42. 13-4-1999 Direction to High Court Registry to furnish copies of the several orders dated 31-3-1999 to

the Advocates forthwith so that they can be communicated to the concerned authorities and officials, with a warning that non-implementation of directions will invite serious action from the Court. (a) The amount due as on 31-1-1995 for the development of lands 10,938-00 (b) Amount due as on 31-1-1995 for the pumpset loan 70,082-00 (c) Amount due as on 31-1-1995 the paddy loan 38,982-00 (d) Amount due as on 31-1-1995 for the sugarcane crop loan 1,25,824-00 (e) Amount due as on 31-1-1995 for the coconut loan 96,184-00 (f) Further interest 826-00 (g) Typing and miscellaneous charges 120-00 Total 3,42,956-00 51. 16-7-1999 Order (c) Directions to the State Government and the Transport Commissioner in regard to autorickshaws to prevent pollution and to convert all autorickshaws from petrol to L.P.G. by 31-12-1999. 52. 30-7-1999 Order (a) Directions to Corporation to complete the works of drains and sidewalks. The Counsel for Corporation directed to inform Mr. Dha-nanjaya, Chief Engineer that in spite of the warning from Court, if he fails to comply with the directions given from time to time, Court will direct disciplinary action against him. Direction to Traffic Department to improve lighting in the roads of Bangalore, and to make it a headlight free zone. 53. 30-7-1999 Order (b) Direction to BWSSB to commence the sewage treatment plant at Cubbon Park by 1-9-1999. Direction to BWSSB and the Corporation to clean up and restore Ulsoor lake, and to consider the suggestions of the Court and report to the Court. 54. 30-7-1999 Order (c) Further directions in regard to conversion of autorickshaws from petrol to L.P.G. and a direction to Government to consider therequest of autorickshaw owners for increasingthe fares. Direction to Traffic Control Department to enforce lane system and prevent blazing headlights. 55. 30-7-1999 Order (d) Directions to Horticulture Department to prevent entry of vehicles into Cubbon Park between 8.00 p.m. and 8-30 a.m. and levy of fine of Rs. 500/- on persons violating the same. Directions to close the gates of Cubbon Park and clear all visitors from the park by 8.00 p.m. and levy fine of Rs. 5007- on any person found within the park premises between 8.00 p.m. and 5-30 a.m. Direction to Horticulture Department to charge Rs. 2/- per person for entry into the Cubbon Park and issue monthly, quarterly, half yearly and yearly passes for Rs. 50A, Rs. 125/-, Rs. 250/- and Rs. 500/- respectively with concession for senior citizens and students and instructions as to traffic regulations between 5.00 p.m. and 8.00 p.m. within the park premises. 56. 30-7-1999 Order (e) Direction to KEB in regard to cutting and pruning of trees for the purpose of erecting electrical poles and drawing of electricity lines and a direction to levy costs of Rs. 1,000/- on KEB for every wanton destruction or damage to trees while drawing electrical lines. Rule is not issued in these petitions (W.P. Nos. 26353 and 26354 of 1997) and the petitions are still at the stage of preliminary hearing. II. W.A. Nos. 5508 and 5509 of 1999: 6. Feeling aggrieved by the interim orders dated 22-9-1997, 21-10-1997, 18-11-1997, 2-12-1997, 16-12-1997, 27-1-1998, 20-2-1998, 6-3-1998, 27-3-1998, 12-6-1998, 3-7-1998, 24-7-1998 and 30-7-1999(d), passed by the learned Judge in W.P. Nos. 26353 and 26354 of 1997 (that is orders at Sl. Nos. 1 to 12 and 55 in para 5 above), the State Government, Commissioner for Transport in Karnataka and the Director General of Police have filed these appeals for setting aside the orders and a direction

to the High Court Registry to list W.P. Nos. 26353 and 26354 of 1997 before a Division Bench in accordance with the Notification dated 8-7-1997. 7. The appellants contend that these orders are passed in a Public Interest Litigation; that having regard to the Notification dated 8-7-1997 issued on the directions of the Chief Justice, all writ petitions filed as Public Interest Litigations will have to be listed before the appropriate Division Bench; that the learned Judge sitting singly could not have therefore passed any interim or final order in W.P. Nos. 26353 and 26354 of 1997. It is also stated that a similar order passed by the learned Judge on 17-7-1998 in W.P. No. 27850 of 1997 was challenged by the State in State of Karnataka v B. Krishna Bhat and the Division Bench by order dated 15-12-1998 allowed the appeal holding that the order was beyond the scope of the proceedings pending before him. The Division Bench directed that the writ petitions (PIL) must be listed before the appropriate Division Bench and it was also declared that even though the writ petition was stated to have been filed in personal interest, in fact it was a petition in public interest which has to be heard by a Division Bench. 8. The appellants contend that all these orders have the effect of interfering in matters of legislative and executive policies, in particular, matters involving recurring and non-recurring financial expenditure on the State Government and that the settled legal position is that the Courts should not interfere in such matters. 9. In regard to orders relating to Cubbon Park and other parks, it is contended that they are covered by the Karnataka Government Parks Preservation Act, 1975 and Karnataka Parks, Play-fields and Open Space (Preservation and Regulation) Act, 1985 and the orders of the learned Single Judge interfere with the discharge of their statutory duties and functions of the State and some of the orders have the effect of requiring the authorities to act in violation of the provisions of the said Acts. 10. A Division Bench of this Court on 11-8-1999, stayed the further proceedings in W.P. Nos. 26353 and 26354 of 1997 and called for the records of the said writ petitions. The Division Bench also stayed the operation of the Order (d), dated 30-7-1999 in W.P. Nos. 26353 and 26354 of 1997. III. W.A. Nos. 6479 and 6480 of 1999 and W.A. Nos. 2 and 3 of 2000: 11. After such stay of the proceedings in W.P. Nos. 26353 and 26354 of 1997 by the Division Bench, the learned Judge passed an order of reference dated 20-8-1999 in W.P. Nos. 26353 and 26354 of 1997 observing that though the power of the Chief Justice to allocate different classes or categories of cases to different Judges cannot be called in question as long as he acts fairly and reasonably, the validity of such allocation should stand the test of arbitrariness and capriciousness; that every Judge of the High Court being a constitutional functionary, has the inherent power to act suo motu and such power cannot be negated by a prohibition contained in an administrative direction issued by the Chief Justice; that the Notification dated 8-7-1997 had the effect of suspending the inherent power of the High Court Judges to take suo motu action; that the Notification dated 8-7-1997 also violated Section 9(xii)(a) of the High Court Act. He also expressed the view that the decision of the Division Bench in A.V. Amarnathan's case, supra, and the decision of the Full Bench of this Court in Narasimhasetty's case, supra, were not correctly decided and required reconsideration. The learned Judge observed: "If a Judge of the

High Court who is bound by his oath of office to uphold the laws, goes by the provisions of the High Court Act, he will be committing a breach of the administrative direction and if he follows the latter, he will be offending the provisions of the High Court Act. It is imperative that the position be correctly resolved because it is my view, in utmost humility, that no administrative direction that is in conflict with the provisions of the High Court Act could have been issued by the Chief Justice. That direction would therefore have to be quashed". The learned Judge has also aired certain grievances regarding allotment of judicial and administrative work to him. 12. The learned Judge passed a second order of reference dated 28-8-1999 expressing the view that a Division Bench has no jurisdiction to hear writ petitions (except habeas corpus) as such power has been vested in Single Judges of the High Court under Section 9(xii)(a) of the H.C. Act; that a Full Bench of this Court in State of Karnataka v H. Krishnappa, clearly held that the original jurisdiction is exclusively confined to the Single Judge and only the appellate jurisdiction is vested in the Division Bench; and that therefore all orders passed by the Division Benches of the High Court in Public Interest Litigations after 8-7-1997 in exercise of original jurisdiction are bad in law and requires to be set aside and all writ petitions (PIL) have to be transferred to Single Judges for disposal. He reiterated that the Notification dated 8-7-1997, is only an administrative direction and as it conflicts with Section 9(xii)(a) of the H.C. Act and the decision of the Full Bench decision in Krishnappa's case, supra, it will have to be quashed immediately or recalled and corrective instructions will have to be issued to the Registry to list all writ petitions before the appropriate Single Judges. He also stated that the decision of the Division Bench in Amarnathan's case, supra, upholding the validity of the Notification dated 8-7-1997 will have to be set aside, as it has not considered the Full Bench decision in Krishnappa's case, supra. 13. Feeling aggrieved by the first order of reference dated 20-8-1999, the State, the Transport Commissioner and the Director General of Police have filed W.A. Nos. 6479 and 64480 of 1999. Feeling aggrieved by the second order of reference dated 28-8-1999, they have filed W.A. Nos. 2 and 3 of 2000. 14. The Division Bench has passed an interim order dated 1-10-1999 in W.A. Nos. 6479 to 64480 of 1999 staying the operation of the observations in the order of reference dated 20-8-1999. IV. W.A. Nos. 3895 and 4737 of 1999; 7432 and 7714 of 1999 and 8218 and 8219 of 1999: 15. Feeling aggrieved by the Order (b), dated 31-3-1999 directing it to pay compensation of Rs. 30,000/- to Mrs. Sheru Pithawala, the Bangalore City Corporation has filed W.A. Nos. 3895 and 4737 of 1999. 16. Peeling aggrieved by the Order (e), dated 30-7-1999 directing imposition of fine of Rs. 1,000/- on KEB for every wanton damage/destruction of trees, while erecting electrical poles or laying electrical wires, KEB has filed W.A. Nos. 7432 and 7419 of 1999. The said order under appeal has been stayed by the Division Bench on 10-12-1999. 17. Feeling aggrieved by the Order (c), dated 16-7-1999 passed in W.P. Nos. 26353 to 26354 of 1997 directing the conversion of petrol driven autorickshaws into LPG Gas driven autorickshaws, the State has filed W.A. Nos. 8218 and 8219 of 1999. V. W.P. No. 28799 of 1999: 18. Mr. Lakshmisagar, the petitioner in this writ petition is an Advocate by profession. He is presently

a Member of Rajya Sabha and earlier a Minister for Law and Parliamentary Affairs of the State. He claims that he learnt from newspapers that the learned Judge was issuing directions, guidelines and instructions to several authorities from time to time in regard to the affairs of Bangalore City; that he was under the impression that the concerned authorities had challenged the said orders on the ground that they were passed without jurisdiction; but even though the said orders were illegal and without jurisdiction (as they were passed in violation of the Notification dated 8-7-1997) the orders have not been challenged by the concerned authorities; and that the said orders could not be permitted to continue in force. He therefore filed the said petition seeking the following directions: (a) a direction to the Registrar of the High Court to place before the Division Bench all orders passed by the learned Judge in W.P. Nos. 26353 and 26354 of 1997 (MV) from the date of filing of the said writ petitions upto 30-7-1999; (b) a direction to the Registrar of the High Court to place before the Division Bench all orders passed by the learned Judge in the discharge of his duties as a Single Judge in any and all other proceedings involving questions to be decided in a public interest litigation, and beyond the scope of the questions raised and involved in such proceedings, from 8-7-1997 upto 30-7-1999; (c) for examination of each of the said orders passed by the learned Judge in the discharge of his duties as a Single Judge and declare such of those orders which are in the nature of orders to be passed in a public interest litigation and which could legitimately be passed only by a Division Bench after 8-7-1997, to be illegal, unconstitutional, inoperative and unenforceable; (d) a direction to Registrar of the High Court to make a periodical report to the Chief Justice of Karnataka about all matters in which orders affecting public interest, in the nature of orders to be passed in public interest litigations, are to be passed hereafter by the learned Judge exercising the jurisdiction of a Single Judge of the High Court of Karnataka, so that immediate remedial measures can be taken against the illegal assumption and exercise of jurisdiction by the learned Judge, of the powers reserved to be exercised by a Division Bench only, learned Judge hereafter; and (e) direct an inquiry into the expenses incurred by each of respondents 4, 5 and 6 and other authorities of the State in obedience to the orders passed by the learned Judge from time to time upto 30-7-1999 including an inquiry into the question as to whether the expenses so incurred had the necessary statutory sanction and as to whether the procedure laid down for incurring such expenses was followed by the authorities concerned. VI. C.C.C. (Cri.) No. 13 of 1999: 19. Mr. B. Krishna Bhat, petitioner in W.P. Nos. 26353 and 26354 of 1997 is the complainant. According to him, Mr. Lakshmisagar has committed contempt of Court by filing W.P. No. 28799 of 1999 seeking the aforesaid reliefs in respect of the orders of the learned Judge. According to him, the prayer in the writ petition and the averments made in the course of the writ petition (W.P. No. 28799 of 1999) scandalise the Court and cast aspersions on one of the learned Judges of this Court, thereby attacking the majesty and dignity of this Court. 20. Passages in the writ petition, to which exception is taken by the complainant, are the following: (a) "As a result of series of illegal orders passed by the learned Single Judge of this Court Sri Justice M.F. Saldanha".... (para 1). (b) "Being an Advocate

by profession, the petitioner had doubts about the legality of the orders passed by the learned Judge from time to time" (para 3). (c) The orders thus passed are not only lacking in jurisdiction, but do not also enjoy the status of a judicial order passed by the High Court of Karnataka" (Ground A). (d) "A perusal of the orders demonstrates that the learned Judge has assumed to himself the role of legislator, subordinate legislative authorities and executive". .... (Ground B). (e) "The orders passed by the learned Judge are not supported either in law or on true facts, but are based on assumptions and personal impressions. .... The orders passed by the learned Single Judge have no statutory basis". . . . (Ground C). (f) "But there are innumerable other orders passed by him which have a bearing on perhaps every aspect of the citizens' day-to-day life in Bangalore, which are passed in utter disregard to enacted legal provisions and procedure established by law". .... (para F). The complainant, therefore, filed the complaint praying for initiation of contempt of Court proceedings against Mr. Lakshmisagar. Points for consideration: 21. The following points arise for consideration in these cases: Part I: 1.1 Whether the standards and levels prescribed by C.M.V. Rules in regard to emission of smoke by motor vehicles are not enforceable till the conditions of the roads are improved by the State and other local authorities? 1.2 Whether the State Government is bound to spend all amounts received as Motor Vehicle Tax, exclusively for laying, improving and maintaining roads? Part II: 2.1 What is the effect of final disposal of the main petition, on the interim orders during the pendency of the petition? 2.2 What is the scope of interference by High Court, in its writ jurisdiction (Public Interest Litigation), in matters of policy, in particular those involving large recurring and non-recurring expenditure? 2.3 Whether all or any of the 56 interim orders passed in W.P. Nos. 26353 and 26354 of 1997 should be sustained and continued? 2.4 Whether a Single Judge can pass any order of reference in a writ petition, after the Appellate Bench has stayed further proceedings in the writ petition and has called for the records? Part III: 3.1 Whether a writ petition is maintainable to set aside a series of interim or final orders passed in public interest by a Single Judge, on the ground that Public Interest Litigation had not been assigned by the Chief Justice to the said Judge? 3.2 Whether filing a writ petition to set aside the orders of Single Judge, by contending that they are passed without jurisdiction and are illegal, amounts to contempt of Court? Part IV: 4.1 What is the scope of the power and authority of the Chief Justice in regard to the practice and procedure of the High Court in hearing and deciding cases? 4.2 What is the effect of Section 9(xii) and other provisions of the H.C. Act, on the power and authority of the Chief Justice? 4.3 Whether Section 9(xii) of the H.C. Act, restricts the prerogative and power of the Chief Justice in the matter of constitution of Benches and allocation of judicial work and whether it prohibits the allocation of any writ petitions (PIL) to Division Benches? 4.4 Does Section 9(xii)(a) of the H.C. Act enables a Single Judge of the High Court to entertain and decide writ petitions, even though writ petitions are not allocated to him under the roster, by the Chief Justice? 4.5 Whether the Notification dated 8-7-1997 directing the listing of all writ petitions of the nature of Public Interest Litigation before Division Benches, is not valid? 22.

Though the validity of the Notification dated 8-7-1997 is not questioned in any of the matters before us and though its validity has been upheld in Amarnathan's case, supra, we propose to re-examine its validity, as it indirectly arises for consideration. All the prayers in the PIL filed by Mr. Lakshmisagar are based on the assumption that the Notification dated 8-7-1997 is valid and the prayer in the Contempt Case is on the assumption that the Notification dated 8-7-1997 is invalid. Secondly, both the references, assuming they are valid, require reconsideration of the validity of the Notification dated 8-7-1997. Re: Point 1.1: Enforceability of Rule 115 of C.M.V. Rules, 1989: 23. The case of Mr. Bhat is that the 'setting' of a carburettor (a device for mixing fuel with air) has a direct bearing on the emission of smoke by the motor vehicle. According to him, if the roads are bad, that is, uneven and full of potholes, the vehicle is subjected to constant jerks which alter the carburettor setting, resulting in the increase of the levels of emission. It is, therefore, contended that the rules prescribing the maximum levels of emission by motor vehicles, could be enforced only if the level of emission of smoke was something that could be completely controlled by the owner or user of vehicle and was related to the maintenance of vehicles; but if the emission levels are to increase on account of bad roads, the owner of the vehicles should not be penalised for the consequential increase in the levels of such emissions/pollution. 24. Section 190 of the M.V. Act makes it an offence to use any vehicle in an unsafe condition. Sub-section (2) of Section 190 of the M.V. Act provides that any person who drives or causes or allows to be driven, in any public place, a motor vehicle, which violates the standards prescribed in relation to road safety, control to noise and air pollution, shall be punishable for the first offence with a fine of one thousand rupees and for any second or subsequent offence with a fine of two thousand rupees. 25. Section 110 of the M.V. Act empowers the Central Government to make rules regarding construction, equipment and maintenance of motor vehicles. Section 110(g) of the Act enables the Central Government to make rules in regard to emission of smoke, visible vapour, sparks, ashes, grit or oil. The C.M.V. Rules have been framed, inter alia in exercise of the power under Section 110. Chapter V of the C.M.V. Rules regulate control of construction, equipment and maintenance of motor vehicles. Rules 115 and 116 empower the offices of the Transport and Police Departments to check and inspect the vehicles in regard to emission levels. 26. Rule 115 deals with emission of smoke, vapour, etc., from motor vehicles. Sub-rule (1) of Section 115 provides that every motor vehicle other than motor-cycles of engine capacity not exceeding 70 cc, manufactured prior to the first day of March, 1990, shall be maintained in such condition and shall be so driven so as to comply with the standards prescribed in these rules. Sub-rule (2) prescribes the standards/emission limits in regard to different types of vehicles. Sub-rules (3), (4) and (5) provide that from the date of commencement of the said sub-rules, petrol driven vehicles and diesel driven vehicles shall be so manufactured that they comply with the emission standards and levels as specified in the said rules. Sub-rule (7) provides that after the expiry of period of one year from the date on which the motor vehicle was first registered, every such vehicle shall carry a valid "pollution under control" certificate issued by

an agency authorised for this purpose by the State Government. The validity of the certificate be for six months or any lesser period as may be specified by the State Government from time to time and the certificate shall always be carried in the vehicle and produced on demand by the officers referred to in sub-rule (1) of Rule 116. 27. Rule 116 of the C.M.V. Rules provides that any officer not below the rank of Sub-Inspector of Police or the Inspector of Motor Vehicles who has reason to believe that a motor vehicle is not complying with the provisions of sub-rule (2) or sub-rule (7) of Rule 115, may in writing direct the driver or any person in charge of the vehicle to submit the vehicle for conducting the test to measure the standards of emission in any one of the authorised testing stations, and produce the certificate within 7 days from the date of conducting the check. Sub-rule (5) of Rule 116 provides that if the test results indicate that the motor vehicle does not comply with the provisions of sub-rule (2) of Rule 115, the driver or any person in charge of the vehicle shall rectify the defects so as to comply with the provisions of sub-rule (2) of Rule 115 within a period of 7 days and submit the vehicle to any authorised testing station for re-check and produce the certificate so obtained from the authorised testing station to the authority referred to in sub-rule (1). Sub-rule (6) provides that if the certificate referred to in sub-rule (1) is not produced within the stipulated period of seven days or if the vehicle fails to comply with the provisions of sub-rule (2) of Rule 115 within a period of seven days, the owner of the vehicle shall be liable for the penalty prescribed under sub-section (2) of Section 190 of the Act. Sub-rules (7) to (9) also provide for suspension of the registration of the vehicles, if the driver or person in charge of the vehicle does not produce the certificate, and for consequential suspension of the certificate of registration of the vehicle and deemed suspension of the vehicle permit, until production of "pollution under control" certificate. 28. Mr. Bhat has not challenged the validity of Rules 115 and 116. A rule can be challenged either on the grounds on which a statute can be challenged or on the ground that the rule does not conform to the statute under which it is made or that the Rule is contrary to some other statute or that it is manifestly arbitrary. A statute can be challenged on the ground of lack of legislative competence or on the ground of violation of fundamental rights or other provision of the Constitution of India. It is not the case of the petitioner that Rules 115 and 116 suffer from any such infirmity. The question is whether Mr. Bhat can contend that Rules 115 and 116 though valid, are not enforceable for an extraneous reason, unconnected with the validity of the rules. 29. Before examining the question, it will be of some use to refer to the description of "emission control system" from the New Encyclopaedia Britannica (15th Edition, Vol. 4, page 476): "There are four main sources for noxious gases from an internal combustion engine: (a) the engine exhaust; (b) the crankcase; (c) the fuel tank; and (d) the carburettor. The exhaust pipe discharges burned and unburned hydrocarbons, carbon monoxide, oxides of nitrogen and sulphur and traces of various acids, alcohols, phenols and heavy metals such as lead. The crankcase is a secondary source of unburned hydrocarbons and to a lesser extent, carbon monoxide. In the fuel tank and the carburettor, the hydrocarbons that are continually evaporating from the gasoline constitute a minor factor in

pollution. To control exhaust emissions, which are responsible for two-thirds of the total engine pollutants, two types of system are used: the air injection system and the improved combustion system. In a typical injection system, an engine driven pump draws air through the carburetor air cleaner and pumps it into the exhaust ports of the cylinder head, in which it combines within the unburned hydrocarbons and carbon monoxide at higher temperature and, in effect, continues the combustion process. In this way a large percentage of the pollutants that were formerly discharged through the exhaust system are eliminated. Improvements in combustion efficiency are effected by modifications in the components that control the whole process of combustion. These modifications have involved changes in shape of the combustion chamber, a computer controlled carburettor to ensure more precise and leaner (lower gasoline content) air-fuel mixtures; spark-timing changes to provide a retarded spark when idling; and increase in the idling speed. . . .". 30. Even assuming that the condition of roads may affect the engine or carburetor setting and consequently affect the emission levels, that by itself cannot be a ground for not enforcing the rules prescribing maximum permissible emission levels. In fact Rule 115(6) of the C.M.V. Rules takes note of this aspect and provides that every motor vehicle manufactured after the specified date shall be designed, constructed and assembled as to enable the vehicle, in normal use, comply with the emission standards despite the vibrations to which the vehicle may be subjected. It is not the case of the petitioner that the emission level depends solely on the condition of the roads. So long as bad condition of the roads is only one among several reasons that may affect the emission levels, and bad condition and indifferent maintenance of the vehicle by the owner continues to be the main reason for excessive emission levels, it is not open to a citizen to contend that his motor vehicles shall not be inspected for emission levels, until roads are improved. 31. Obedience to the Laws is the essence of Rule of Law. No citizen can disobey a law or seek a direction to the State not to enforce any of its laws, on the ground that the State by its action or inaction has made it difficult for a citizen to comply with the law. A citizen cannot claim or expect quid pro quo between citizen's obligations and State's obligation, nor refuse to obey the law, on the ground of want of such quid pro quo. If any citizen or any section of citizens are aggrieved by a law, they can challenge it in a Court, or give a representation to his/their elected representatives to modify the law. But, they cannot seek suspension of enforcement of the law on the ground that until State discharges its obligations they are not bound to discharge their obligations. 32. In State of Uttar Pradesh v Harish Chandra, the Supreme Court has observed as follows: "Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a statute or by rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law. . . .". (emphasis supplied) The petitioner cannot therefore seek a direc-

tion from this Court to the Government or any authority under the M.V. Act not to discharge their duties and functions relating to inspection of vehicles as required under the rules either for pollution checks or otherwise. Re: Point 1.2: Whether motor vehicle tax should be spent only for improving roads: 33. The petitioner contends that the motor vehicles tax realised by the Government has to be spent only for road maintenance and incidental matters and there should be a quid pro quo between the revenue realised by way of motor vehicles tax and amount spent for maintenance of roads. 34. A tax is an imposition made for purpose of general revenue. It is a compulsory exaction of money for public purposes, enforceable by law and is not a payment for services rendered. There is no quid pro quo between the taxpayer and the Government and it has no reference to any service rendered by the State Government or to any specific benefit conferred or to be conferred upon the taxpayer. Only in regard to fee, there is a need for a broad and reasonable correlation between the total fee levied and collected and the expenses incurred for service rendered or intended to be rendered by way of quid pro quo – vide Om Parkash Agarwal v Giri Raj Kishori and Others, P.M. Ashwathanarayana Setty v State of Karnataka and Krishi Upaj Mandi Samiti v Orient Paper and Industries Limited. 35. What is collected under the Motor Vehicle Taxation Act by the State Government is a tax and not a fee. Therefore, there is no need for any quid pro quo between the taxpayer and the State. The tax collected in regard to motor vehicles need not be earmarked or used for maintenance of roads only. Hence, the second point is also answered in the negative. Re: Point 2.1 – Effect of final disposal on interim orders: 36. An interim relief is granted only in aid of, and ancillary to, the main relief which may be available to a party on final determination of his right in the proceedings. Interim relief is granted to ensure that the final relief that may be granted does not become infructuous or to ensure that the ends of justice are not defeated. Interim orders are therefore necessarily always subject to the final order and normally come to an end or become ineffective when the final decision is rendered, unless expressly saved or kept alive by being made a part of the final relief. Interim orders are a means to an end and not an end in themselves. A Court should always take care not to grant by way of interim relief, anything more than what can be granted as final relief in the proceeding, nor grant something which is irreversible and which cannot be set right while granting the final relief. An interim order can always be revised, corrected, cancelled or set right, while disposing of the main matter finally, if the Court finds that the interim order is not warranted or has caused injustice. In State of Orissa v Madan Gopal Rungta, the Supreme Court held: “In our opinion, Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. . . An interim relief can be granted only in aid of, and as ancillary to, the main relief which may be available to the party on final determination of his rights in a suit or proceeding”. In State of Madhya Pradesh and Others v M/s. M.V. Vyavsaya and Company, the Supreme Court held as follows: “Even otherwise, the interim orders passed are always subject to the final orders in the matter. The interim orders can always be corrected or revised at the final stage”. In Kihota Hollohon

v Zachilhu and Others, the Supreme Court stated the purpose of granting interlocutory orders in writ proceedings, thus: "The purpose of interlocutory orders is to preserve in status quo the rights of the parties, so that, the proceedings do not become infructuous by any unilateral overt acts by one side or the other during its pendency". A Division Bench of this Court in C. Venkatiah v State of Mysore and Others, held: "It appears to us too obvious for argument that when a main matter comes to an end, all interim orders, which are expressly made in terms which keep them in force only till the disposal of the main matter, must and do come to an end, unless the very terms of the order are such as to keep it alive collaterally to the main matter. Interim orders are only interim orders and are made in aid of the ultimate relief a party is likely or is expected to get, at the final disposal of the main matter". 37. We have rejected both the prayers in W.P. Nos. 26353 and 26354 of 1997. The only interim prayer in the said writ petitions is for a direction to the Officers of Transport and Police Departments not to intercept petitioner's two vehicles for pollution checks until the road conditions in Bangalore are improved. That interim prayer was never granted. None of the 56 interim orders have any bearing on the two main prayers in the said writ petitions, nor are they in aid of, nor ancillary to the main reliefs sought. Even if any of the interim orders has any remote connection to the main prayers, as the main prayers are rejected, such interim orders also come to an end. They do not survive beyond the final disposal of the said writ petitions and cannot be enforced henceforth. No special circumstances exist to continue them, beyond the period of pendency of the main petition. In fact, we have separately considered the validity of the said 56 interim orders under Point 2.3 and held them to be unsustainable. Re: Point 2.2 – Scope of PIL in regard to matters of policy: 38. The parameters and principles relating to powers of Courts to interfere in matters of policy, particularly those involving financial implications, in Public Interest Litigation, have been considered by the Supreme Court in several decisions. In S.P. Gupta v President of India, the Supreme Court held that where there is a public injury by the act or omission of the State or a Public Authority and such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals, a member of public having sufficient interest can certainly maintain an action challenging the legality of such act or omission. 39. In Dr. P. Nalla Thampy Them v Union of India and Others, the Supreme Court while dealing with a petition under Article 32 of the Constitution seeking directions to the Government and its instrumentalities to improve Railway Services observed thus:– "It is of paramount importance that the services should be prompt, efficient and dignified. The quality of the service should improve. Travel comforts should be ensured. Facilities in running trains should be ensured. Quality of accommodation and availability thereof should be ensured. The administration should remain always alive to the position that every bona fide passenger is a guest of the service. Ticketless travelling has to be totally wiped out. We are of the view that it is this class of passengers which is a menace to the system. Without any payment these law-breakers disturb the administration and genuine passengers. Stringent laws should be made and strictly enforced to free the Railways from

this deep-rooted evil. Security both to the travelling public as also to the non-travelling citizens must be provided and this means that accidents have to be avoided, attack on the persons of the passengers and prying on their property has to stop. Scientific improvements made in other countries and suitable to the system in our country must be briskly adopted. The obligations cast by the Railways Act and the Rules under it must be complied with. It is relevant to point out here that in the counter-affidavit the respondents have denied some of the assertions of the petitioner, yet no dispute has been generally raised to the stand taken in the writ petition. We are alive to the fact that Government have limitations, both of resources and capacity, yet we hope that the Government and the Administration would rise to the necessity of the occasion and take it as a challenge to improve this great public utility in an effective way and with an adequate sense of urgency. If necessary, it shall set up a high powered body to quickly handle the many faced problems standing in the way. Giving directions in a matter like this, where availability of resources has a material bearing, policy regarding priorities is involved, expertise is very muck in issue, is not prudent and we do not, therefore, propose to issue directions". (emphasis supplied) 40. In State of Himachal Pradesh v Umed Ram Sharma, the Supreme Court while considering certain orders of the High Court directing construction of roads and directing State Government to allot particular sums for expenditure on particular projects and regulating matters of finance, observed thus: "Sub-article (3) of Article 203 stipulates that no demand for a grant shall be made except on the recommendation of the Governor. Under the constitutional set-up, the said demand by the Governor in terms of sub-article (3) of Article 203 must be on the recommendations of Council of Ministers. Article 204 deals with the Appropriation Bills. After the passing of the Appropriation Bill, making provision for grants for money which are charged on the consolidated funds should be sanctioned by the legislature. In case of supplementary, additional or excess grants, these must be in compliance with Article 205 of the Constitution which in a sense provides that if any fund is found insufficient for a particular purpose of the year or need has arisen then the Governor i.e., the Government must get sanction to another. Statement showing the estimated amount of the additional expenditure and such would be the demand for excess grant and would be passed in accordance with the provisions contained in the other Articles of the Constitution. According to provisions in Himachal Pradesh Budget Manual, in case of additional expenditure, a supplementary Appropriation Bill has to be presented to the legislature. There are detailed instructions regarding the preparation, submission, etc., of applications, for reappropriation. The sum and substance of the said requirements are the total sanction of bill for a project is within the domain of the legislature and the executive has no power to exceed the total sanction without the consent or assent of the legislature and the Court cannot impinge upon that field of legislature. The executive, however, on the appreciation of the priorities can determine the manner of priorities to be presented to the legislature. The Court cannot also impinge upon the judgment of the executive as to the priorities". (emphasis supplied) The Supreme Court also observed that affirmative action in the form of some remedial measure, in public

interest, in the background of constitutional aspirations, by means of judicial directions, in cases of executive inaction or slow action, is permissible within limits and that if the High Court by the process of judicial review activises or energises executive action, it should do so cautiously and remedial action in public interest must also be with caution and within limits. In that case, the High Court had issued two directions. The first was a direction to the executive to favourably consider the demand for additional funds for construction of a road. The second was a direction to report to the Court the progress that had been done. The Supreme Court felt that the first direction was sufficient and observed that the High Court need not take any further action and leave the priorities and initiative to the judgment both of the executive and legislature to pursue the matter. 41. In Hindi Hitrakshak Samiti v Union of India, the Supreme Court cautioned thus; "It is well-settled that judicial review, in order to enforce a fundamental right, is permissible of administrative, legislative and governmental action or non-action, and that the rights of the citizens of this country are to be judged by the judiciary and judicial forums and not by the administrators or executives. But it is equally true that citizens of India are not to be governed by the Judges or judiciary". (emphasis supplied) The Supreme Court held that where a question is one on which debate is possible and acceptance of one view over the other involves a decision on policy, the Court should not deal with and decide on such question. 42. In G.B. Mahajan v Jalgaon Municipal Council, the Supreme Court observed that in the context of expanding exigencies of urban planning it would be difficult for the Court to say that a particular policy option was better than another; and matters of policy lack adjudicative disposition, unless they violate constitutional or legal limits on power or have demonstrable pejorative environmental implications or amount to clear abuse of power. The Court quoted with approval the following observations of Sir Gerard Brennan in his article "Purpose and scope of Judicial Review": "The Courts are kept out of the lush field of administrative policy, except when policy is inconsistent with the express or implied provisions of a statute which creates the power to which the policy relates or when a decision made in purported exercise of a power is such that a repository of the power, acting reasonably and in good faith, could not have made it. In the latter case, 'something overwhelming' must appear before the Court will intervene. That is, and ought to be, a difficult onus for an applicant to discharge. The Courts are not very good at formulating or evaluating policy. Sometimes when the Courts have intervened on policy grounds, the Court's view of the range of policies open under the statute or of what is unreasonable policy has not won public acceptance. On the contrary, curial views of policy have been subjected to stringent criticism. In the world of politics, the Court's opinions on policy are naturally less likely to reflect the popular view than the policies of a democratically elected Government or of expert administrators..... The considerations by reference to which the reasonableness of a policy may be determined are rarely judicially manageable....". (emphasis supplied) 43. In Bandhua Mukti Morcha v Union of India and Others, the Supreme Court observed thus: "Where the Court embarks upon affirmative action in the attempt to remedy a constitu-

tional imbalance within the social order, few critics will find fault with it so long as it confines itself to the scope of its legitimate authority. But there is always the possibility, in public interest litigation, of succumbing to the temptation of crossing into territory which properly pertains to the legislature or to the executive Government. For in most cases the jurisdiction of the Court is invoked when a default occurs in executive administration, and sometimes where a void in community life remains unfilled by legislative action. The resulting public grievance finds expression through social action groups, which consider the Court an appropriate forum for removing the deficiencies. Indeed, the citizen seems to find it more convenient to apply to the Court for the vindication of constitutional rights than appeal to the executive or legislative organs of the State. In the process of correcting executive error or removing legislative omission the Court can so easily find itself involved in policy making of a quality and to a degree characteristic of political authority, and indeed run the risk of being mistaken for one. An excessively political role identifiable with political governance betrays the Court into functions alien to its fundamental character, and tends to destroy the delicate balance envisaged in our constitutional system between its three basic institutions. The Judge, conceived in the true classical mould, is an impartial arbiter, beyond and above political bias and prejudice, functioning silently in accordance with the Constitution and his judicial conscience. Thus does he maintain the legitimacy of the institution he serves and honour the trust which his office has reposed in him". (emphasis supplied) 44. Justice Dr. A.S. Anand, Hon'ble Chief Justice of India, in his Article "Judicial Review – Judicial Activism – Need for Caution", has analysed the concept of judicial activism in the context of Public Interest Litigation. The following passages therefrom are apt: ".....The function of the judiciary is not to set itself in opposition to the policy and politics of the majority rule. On the contrary, the duty of the judiciary is simply to give effect to the legislative policy of the statute in the light of the policy of the Constitution.....". "With a view to retain legitimacy and its efficacy, the potent weapon of PIL forged for the benefit of the weaker sections of society and those who, as a class, cannot agitate their legal problems by themselves has to be used carefully so that it may not get blunted by wrong or overuse. Care has to be taken to see that PIL essentially remains Public Interest Litigation and does not become either Political Interest Litigation or Personal Interest Litigation or publicity interest litigation or used for persecution. If that happens, it would be unfortunate. PIL would lose its legitimacy and the credibility of the Courts would suffer. Finding the delicate balance between ensuring justice in the society around us and yet maintaining institutional legitimacy is a continuing challenge for the higher judiciary. The Courts must be careful to see that by their over-zealousness they do not consciously or unconsciously cause uncertainty and confusion in the law. In that event, the law will not only develop along uncertain lines instead of straight and consistent path but the judiciary's images may also in the bargain get tarnished and its respectability eroded. That would be a sad day. Judicial authoritarianism cannot be permitted under any circumstances". "Judicial activism in India encompasses an area of legislative vacuum in the filed of Human Rights.

Judicial activism reinforces the strength of democracy and reaffirms the faiths of the common man in the Rule of Law. The judiciary, however, can act only as an alarm clock but not as a time-keeper. After giving the alarm call it must ensure to see that the executive performs its duties in the manner envisaged by the Constitution. Judicial activism, however, is not an unguided missile. It has to be controlled and properly channelised. Courts have to function within established parameters and constitutional bounds. Decision should have a jurisprudential base with clearly discernible principles. Limits of jurisdiction cannot be pushed back so as to make them irrelevant. Courts have to be careful to see that they do not overstep their limits because to them is assigned the sacred duty of guarding the Constitution. People of this country have reposed faith and trust in the Courts and, therefore, the Judges have to act as their trustees. Betrayal of that trust would lead to judicial despotism-which posterity would not forgive. Thus, 'judicial whistle' needs to be blown for a purpose and with caution. It needs to be remembered that Court cannot run the Government nor the administration, indulge in abuse or non-use of power and get away with it. All it means is that Judges are expected to be circumspect and self-disciplined in the discharge of their judicial functions. It is an onerous duty cast on the judiciary to see that either inadvertently or overzealously, they do not allow the instrumentality of the Courts to be polluted thereby eroding public trust and confidence in the Institution. Judicial activism is a delicate exercise involving creativity. Great skill is required for innovation. Caution is needed because of the danger of populism imperceptibly influencing the psyche. Public adulation must not sway the Judges and personal aggrandisement must be eschewed. It is imperative to preserve the sanctity and credibility of judicial process. Let us all strive to achieve this end". (emphasis supplied) 45. In its constant vigil to safeguard and enforce fundamental rights, the Courts may subject administrative, legislative and executive action or inaction, to judicial review. In a more active role, the Courts may also frequently sound the alarm and awaken the legislature and/or the executive, so that they are activated to fulfill the legitimate aspirations of people and are sensitised to perform their constitutional obligations. But it should never be forgotten that the basic function of the judiciary is to adjudicate, and not formulate or implement governmental policies. The Courts should not routinely decry governmental policies, nor suggest or impose upon the Government untested populist solutions suggested by armchair activists and axe-grinding busybodies. 46. The process of policy making, involves ascertaining of factual situation and ground realities, weighing alternatives, balancing advantages and disadvantages, fixing priorities, considering the demands and aspirations of different groups, adjusting financial resources and striving to achieve social justice. When a set of lawmakers are voted to office in a democratic set up, either at macro level (Central or State legislature) or at a micro level (municipal or panchayat bodies), on the plank of specified set of promises, it is for them to formulate policies reflecting the social, economic and moral aspirations of the people; and it is the function of the executive to implement them. In areas left unfilled by the legislature, executive formulates policies, again on the basis of several inputs like factual and analytical reports and sci-

entific projections and forecasts. Judiciary is neither intended, nor equipped, to formulate or implement policies. 47. The priorities and solutions perceived as proper and apt by the Judges, in political and economic issues, need not necessarily be politically or economically the right and proper solutions. Any activism by the judiciary in public interest should only be to ensure that fundamental rights are protected, executive lethargy and inaction is removed and policies are formulated and implemented in accordance with the Constitution, by the authorities responsible for it. If the Courts involve themselves either in formulating policy or if they thrust their views on the Government in matters of policy or get down to the level of overseeing and supervising the day-to-day implementation thereof, they will be venturing into alien areas where judicial activism may well become judicial authoritarianism. 48. The role of judiciary in public interest litigation should be limited to only two functions, if its role is to be constructive and positive, but at the same time not encroaching upon the field of activity of the other wings of the Government. They are.– (a) find out whether a legal wrong has been committed or an illegal burden has been placed, on a person or class of persons who by reason of poverty, helplessness or disability or social or economical disadvantageous position are not able to fight for their rights or alternatively whether there is public injury by any action or in action on the part of the State or public authority in matters of public relevance and public interest like environmental protection, pollution control, illegal and unauthorised levies and extractions etc.; and (b) ensure that the concerned authority initiates remedial action in accordance with law. In appropriate cases, there may also be periodical reviews or reminders, to ensure that the remedial action is continued by the concerned authority to its logical conclusion, and not abandoned midway. But, the role does not extend to making policy or deciding the remedy from among the field of choices, or implementing the chosen remedial measure or punishing and penalising the officers concerned for inaction or insufficient action. 49. We may close the discussion on this point, by referring to the following words of warning given by Robert H. Bork in his thought provoking book "Tempting of America" (pages 1, 2 and 5): "In law, the moment of temptation is the moment of choice, when a Judge realizes that in the case before him his strongly held view of justice, his political and moral imperative, is not embodied in a statute or in any provision of the Constitution. He must then choose between his version of justice and abiding by the American form of Government. Yet the desire to do justice, whose nature seems to him obvious, is compelling, while the concept of constitutional process is abstract, rather arid, and the abstinence it counsels unsatisfying. To give in to temptation, this one time, solves an urgent human problem, and a faint crack appears in the American foundation. A Judge has begun to rule where a legislator should. The democratic integrity of law, however, depends entirely upon the degree to which its processes are legitimate. A Judge who announces a decision must be able to demonstrate that he began from recognized legal principles and reasoned in an intellectually coherent and politically neutral way to his result. Those who would politicize the law offer the public, and the judiciary, the temptation of results without regard to democratic legitimacy. But,

if Judges are, as they must be to perform their vital role, unelected, unaccountable, and unrepresentative, who is to protect us from the power of Judges? How are we to be guarded from our guardians? The answer can only be that Judges must consider themselves bound by law that is independent of their own views of the desirable. They must not make or apply any policy not fairly to be found in the Constitution or a statute". Re: Point 2.3 – Validity of the 56 interim orders: 50. We will now turn to the validity of the several interim orders passed by the learned Judge in W.P. Nos. 26353 and 26354 of 1997. They are interim orders only in the sense that they do not dispose of the main petitions. In another sense they are independent orders, unconnected with the main prayers or interim prayer in the petitions. The two reliefs sought in the main writ petitions are as follows: (a) direction to officers of Police and Transport Departments, not to check Mr. Bhat's two vehicles for violation of prescribed emission levels; and (b) direction to the State to utilise the entire motor vehicle tax only for betterment of roads in the State. The 56 interim orders made by the learned Judge, broadly cover the following subjects: (i) Improvement of roads, public health and infrastructural facilities in Bangalore. Laying roads and sidewalks, improving street lighting, co-ordination among agencies regarding digging footpaths and road cutting, prevention of dumping of debris and hospital waste, etc. (ii) Control and regulation of traffic in Bangalore (strict adherence to lane system in traffic, halting at lights, prevention of use of dazzling headlights etc.). (iii) Protection and better maintenance of Cubbon Park and other parks in Bangalore. (iv) Regulation of entry and use of Cubbon Park (erection gates, barring entry and use of vehicles and members of public during night time, etc.). (v) Protection of environment and pollution control (prevention of cutting of trees, cleaning of lakes, planting trees, use of LPG instead of petrol in autorickshaws etc., garbage disposal). (vi) Initiating action for violation of Building Bye-laws and regulations. (vii) Fixing responsibility on local and statutory authorities and its officers for violations, levying fine on BCC and KEB and awarding compensation. 51. There is no doubt that the learned Single Judge has acted with best of intentions. But, the question is whether the orders are legal and valid. In matters relating to law and justice, as in several other fields, the end does not necessarily justify the means. Further judicial review under Article 226 is concerned more with the decision making process than the decision itself. 52. There were no pleadings in regard to the subject-matter of any of these orders. Any complaint or grievance aired before the learned Judge regarding a matter of public interest, either orally or by letters or reports in the media were taken cognizance by the learned Judge, and the learned Counsel for the concerned local or other authority were directed to be present. After hearing the views of the learned Counsel for petitioners in the writ petition and the concerned authority, on the subject-matter of public grievance, these orders were passed periodically. The orders are not with reference to any specific violation of any private or public right by any authority, except in one case which is separately dealt with. The relevant statutes and rules were not considered. The budgetary constraints and financial implications were ignored. Relevant files and documents were not called for. The several options, alternatives and priorities that will usually be

considered by a legislature or the executive in taking policy decisions were not examined. On the other hand, a particular remedy suggested by Counsel, or thought of by the learned Judge himself, were discussed and orders were passed on that basis. No opportunity was given to the concerned authorities to test the feasibility of the remedies or solutions put forth or directed by the learned Judge in his orders. The proceedings were more like a public hearing on grievances by a Minister; and the orders were sometimes in the nature of expression of opinion by an Arbitrator, sometimes in the nature of suggestions by a Conciliator and sometimes having the trappings of judicial orders. The orders are an innovative amalgam of suggestions, directions and threats, in an attempt to cut red tape and reach the core of the matter at issue and give immediate relief to the public. As noticed above, the orders related to a wide range of subjects – erection of sewage disposal plant in the Cubbon Park; replacing petrol by LPG gas as the fuel for autorickshaws; introducing wormiculture as an effective way of disposal of garbage and convert garbage into manure; levying fine on persons entering Cubbon Park with or without vehicles after specified hours; directing erection of gates around Cubbon Park; regulating construction of buildings; repairing roads and sidewalks; coordinating the work of several authorities so as to avoid frequent digging and cutting of roads/sidewalks; improving street lighting; preventing pollution; protecting ecology; fixing fines or fees and directing authorities to collect spot fines without notice or enquiry and punishing statutory authorities for omissions and commissions, by awarding compensation or levying fines. 53. The orders passed in any PIL affects not only the rights of persons before the Court, but entire public. Courts are ill-equipped to consider and decide upon the several conflicting claims and interests, or assess the social needs and economic constraints, which are absolutely essential before formulating any policy. Nor are the Courts geared to take over implementation or detailed supervision of implementation of remedial measures. The traditional role of the Court is to examine the decision making process. The activist role of the Court is to suggest action or activise the concerned agency. By his interim orders, the learned Judge has not only pointed out the inaction or slow action in several fields, but has decided upon the remedial measures and supervised the implementation of the remedial measures with active participation. Instead of either examining whether existing policies are arbitrary or unreasonable, or suggest to the concerned authorities that the existing policies/schemes/projects were inadequate to meet the needs or tackle the evil sought to be remedied, the learned Judge, in his enthusiasm and anxiety to cut across red-tape, has entered the forbidden field of policy making and implementation, which are the fields of legislature and the executive. Instead of functioning as an 'alarm clock', he has functioned as a 'time-keeper'. There can be no doubt that some of the orders have yielded some visible and positive benefits and results. But any attempted encroachment upon the functions of legislature and executive will disturb the fine constitutional balance that separates the powers of the legislature, executive and judiciary. However, laudable the objects of the orders, whatsoever be the benefits to the public by such orders, the means adopted to achieve the end, are beyond the judicial limits. The 56 orders cannot therefore be sustained nor

can they be continued (apart from the fact that they are invalid on account of having been passed without jurisdiction, contrary to the roster allotment under the Notification dated 8-7-1997). Having considered the validity of all the interim orders in general, we will make a special reference to three orders which are challenged by filing separate appeals. Order (b), dated 31-3-1999 against BCC (W.A. Nos. 3895 and 4737 of 1999): 53.1 A complaint was addressed by one Mrs. Sheru Pithawala to the learned Judge alleging that the footpath near her house was left in an unsafe condition by opening a drain, as a result of which she sustained a fall resulting in a fracture necessitating surgery and that she spent Rs. 30,000/- on medical expenses. The interim order dated 15-2-1999 refers to the learned Judge handing over the said complaint to the learned Advocate for the Corporation with a direction to the Chief Engineer to investigate into the matter and file his report. The Court also directed the Corporation by the said order to show cause why Corporation should not be directed to reimburse the 'loss' caused to the citizen. 53.2 In his order dated 31-3-1999, the learned Judge observed that "supporting evidence such as photographs, medical records and like" have been pointed out and Mrs. Pithawala's claim was supported by two other persons. He then proceeded to hold as follows: "Despite more than one direction to re-align the sidewalks and to keep them free from obstruction and obstacles and more importantly to ensure that there were no open gaps on the footpaths, the Corporation has done nothing in the matter. It is, therefore, imperative that this Court should even if this is to be treated as a test case, order compensation for the injury caused to a citizen as this is the only means whereby the Corporation will be spurred into action". The learned Judge thereafter applied the doctrine of 'res ipsa loquitur' and directed the Corporation to reimburse the medical expenses of Rs. 30,000/- to Mrs. Pithawala within 30 days and recover the same from the concerned engineers, other staff and the Contractor who were responsible for the negligence in maintaining the concerned footpath/drain. 53.3 Neither the complaint nor a copy of the complaint of Mrs. Pithawala is in the file. The photographs, medical records and statements of two other supporting persons is not in the file. The copy of the show-cause notice issued personally by the learned Judge is also not in the file. In fact even the address of Mrs. Pithawala is not in the file and for want of address, notice could not be issued to her in the appeals filed by B.C.C. She neither appeared in person at anytime in Court before the learned Judge nor was represented by any Counsel. 53.4 The Corporation admits that a notice to show cause was issued in the matter. But neither the injuries of Mrs. Pithawala nor any negligence on its part is admitted by the Corporation. The Corporation was not given any opportunity to test the veracity of the claim by cross-examining the claimant or her witnesses. The scope of the duty of a local authority in the matter of maintaining footpaths and the extent of their liability was not considered. Whether negligence could be presumed in such a matter is not examined. In fact the matter requires detailed examination of facts as observed by the Supreme Court in Chairman, Grid Corporation of Orissa Limited v Sukamani Das. 53.5 While we fully appreciate the concern shown by the learned Judge to an old and helpless lady, we are constrained to point out

that the procedure adopted in making the order, to say the least, is opposed to principles of natural justice. As the order is being set aside on other grounds, we do not propose to consider the question whether such compensation could have been awarded in a writ proceedings. Order (c), dated 16-7-1909 against the State (W.A. Nos. 8218 and 8219 of 1999): 54.1 On 16-7-1999, the learned Judge passed an order stating that the pollution levels in Bangalore had risen to intolerable limits on account of exhaust fumes from autorickshaws, which used adulterated fuel. He also felt that the State Government was not taking any steps to check this menace, He, therefore, directed the State Government and the concerned Department to implement the following directions: (i) The Transport Authorities in the State shall notify all owners/operators of all forms of three wheelers to convert their vehicle from petrol to gas. (ii) The Transport Authorities should properly monitor the process of conversion to ensure that no spurious or sub-standard work was undertaken while effecting such conversion. (iii) The Transport Authorities should ensure that only standard and approved kits are used in conversion after following scientific procedure. (iv) The process of conversion shall commence from 15-8-1999 and be completed by 31-12-1999; and directed that no three wheeler in the State shall be permitted to operate on any fuel other than gas after 31-12-1999 and if any vehicle was found to be using any fuel other than gas from 1-1-2000, they should be impounded. 54.2 Whether three wheelers/autorickshaws should be permitted to operate in the State, particularly in cities like Bangalore and whether they should operate on traditional fuel like petrol or whether all three wheelers should operate with LPG, as fuel, are matters of policy. According to the State, there are more than 55,000 autorickshaws plying in Bangalore and more than 1,25,000 autorickshaws plying throughout the State. The grievance of the State is that the learned Judge has tried to formulate and enforce a policy without realising the magnitude of the problem and the various special factors involved. It is pointed out that it is next to impossible for the Department to supervise conversion of each vehicle from petrol to LP Gas, as directed. It is also stated that adequate number of standard kits were not available; and adequate mechanics having the skill and experience to convert lakhs of vehicles within a period of four and half months are also not available. It is stated that any conversion done in a hurry, or by unskilled persons, or with kits which are not properly tested, may lead to explosions resulting in loss of life and property, particularly in crowded areas of a city like Bangalore. It is also stated that the Central Government, by letters dated 19-7-1999 and 8-10-1999 have instructed all Governments to exercise restraint and control over use of LPG in Automobiles and not to precipitate the matter unless appropriate orders/rules regulating such use of LPG were framed and notified and necessary infrastructural network for conversion and maintenance of vehicles with LP Gas were created and the norms and measures in regard to safety are prescribed. 54.3 There is considerable cause in the grievance of the Government. While it is true that noxious smoke will be reduced by substituting LP Gas instead of petrol as fuel in autorickshaws, the fact that use of LP Gas without proper safety measures and without proper conversion and maintenance may lead to accidents and explosions involving loss of life and property,

cannot be lost sight of. The havoc likely to be caused by an explosion in any busy area or busy road need not be over-stressed. In fact, in such matters, the policy making should be left exclusively to the Government as it has the facilities and capacity to consider all factors and inputs before taking a decision. The Court's function in such a matter should only be to point out the need for using alternative fuels to reduce pollution and suggest early implementation of any policy decision in the matter. The order is passed without having scientific data, without realising the magnitude of the problem and without considering the feasibility of directing conversion of all autorickshaws within a short period. 54.4 It is also seen that the State Government, the Central Government, and the Transport Department were not given adequate or proper opportunity to place necessary material before the learned Judge. They were handicapped, as there was no properly constituted proceedings, wherein they could place the material. The learned Judge was considering several matters of public interest in a single case without the benefit of pleadings. The said order relating to a policy cannot therefore be sustained. Re: Order (e), dated 30-7-1999 against KEB (W.A. Nos. 7432 and 7714 of 1999: 55.1 The learned Judge has passed an order on 30-7-1999 stating that 18,000 complaints were received complaining about the manner in which the KEB personnel hacked and destroyed trees in Bangalore under the guise of pruning them. The learned Judge also states that he had written to the Chairman of the KEB in the matter, but there was no response and the work gangs employed by the KEB continued to destroy the trees, when what was required was only pruning. He, therefore, directed as follows: "In deference to the demands from over ten lakh citizens residing in different parts of the city who had been offended by this behaviour and in order to preserve and safeguard the city's green cover, it is absolutely necessary to direct that there shall be total prohibition on KEB on its own cutting or pruning any trees hereafter. In all those instances where this process is necessary, the KEB shall request an officer of the Forest Department to accompany the KEB staff or the contractor concerned and the pruning shall be done only under the supervision of that officer. Necessary steps shall be taken to ensure that only the required pruning is done and that due care and caution is exercised in the process that no damage or mutilation takes place and furthermore that due care and caution is exercised in order to ensure that the tree does not get lopsided. It has been pointed out to the Court that as a result of one-sided cutting, that the balance of the tree gets upset and that this is the reason for the tree falling over whenever there is a strong breeze. In view of the fact that the KEB has displayed total and complete disregard for all requests and instructions hitherto, it is necessary to prescribe that if these directions are not followed and the KEB causes any wanton tree destruction hereinafter that costs quantified at Rs. 1,000/- for each tree that is damaged or destroyed will be levied on the KEB". 55.2 Let alone 18,000 complaints, not even a single complaint against KEB is found on the records. We are not clear where is the demand from a million citizens in regard to the matter as stated by the learned Judge in his order. In the appeals filed by KEB, the copy of the letter dated 2-2-1999 sent by the learned Judge to the Chairman of the KEB, calling upon the Chairman to take

disciplinary action against everyone of the employees of KEB, who is involved in destroying trees and take effective steps to stop the devastation, is produced. In that letter the learned Judge also stated thus: “Unlike your officers and staff, the right thinking residents of this city desire that the trees be preserved and maintained. Mr. Bhat has volunteered to assist the Corporation in this regard and it is my suggestion that you should take advantage of his expertise in this field and get your staff to imbibe something from the experts instead of functioning like ruthless butchers. My experience with your officers located in the East Division office which is very close to my residence has been awful. One corner of the compound has been used to put up a temple which has been funded by the very people with whom your officers work in partnership viz., the contractors all of whose”generous" contributions have been prominently displayed on a tablet. I cannot conceive of a better form of institutionalising corruption“. 55.3 The Chairman of the KEB sent a reply dated 27-2-1999 explaining the position of KEB:”Bangalore City, for a large part is served by overhead lines extending over 13,574 kms. As against this, the extent of underground cable is limited to 2,113 kms. Ideally, if we were to have only underground cables, the need to trim tree branches regularly would not have arisen. But the enormous cost involved in converting overhead lines to underground cables, close to Rs. 1,000 crores for a fully underground cable network, makes it a near impossible alternative in the foreseeable future, especially, given the fragile financial position of KEB. We cannot over-emphasise the need from time to time to trim tree branches which overgrow on power lines. May I take this opportunity of pointing out that the distribution network of overhead lines in Bangalore City is many years old and was established well before the extensive roadside tree planting programme was taken up in Bangalore City. All of us love trees. It is just that trees planted under the power lines during mid eighties should have been better planned. This problem has been compounded by the planting of coconut palms which pose the danger of causing electrical accidents. The result of this has been two-fold. Trees often grow over electric lines. As a consequence the tree branches touch the electric lines causing interruption of power supply. Worse still, the tree branches often break and fall on the live electric lines. The live snapped wire falls on the ground resulting in danger to the lives of the persons in the vicinity. There have been a few fatal accidents of this kind recently. Hence, the imperative to regularly trim tree branches. KEB has a manpower shortage of nearly 15,000, the majority being maintenance men like linemen/mazdoors. Therefore, KEB is forced to engage casual labourers on daily wage basis for trimming of tree branches. Given the large tree population and the woefully inadequate number of supervisory staff, there have no doubt been some instances of indiscriminate cutting of tree branches. Recently after receiving a complaint, I myself went in-depth and enquired with the supervisory staff and linemen in Rajajinagar and asked them about the methods of tree trimming. They informed me that the tree trimming workload in the area was extensive and there were only 10 labourers to take up tree trimming and other maintenance works. If tree trimming is taken up in a manner that branches do not touch the lines, then tree trimming will have to be taken up every month which may not be

practicable. This is something like our going for a haircut every week, if we want to maintain the same look which is again not economical and therefore we go for a haircut once in 6 or 8 weeks. Recognising the urgent need to resolve this problem we have already taken the following steps: 1. KEB has requested the Resident Welfare Associations to actively oversee tree branch cutting/trimming programme. KEB has issued identification Badges to 2 office bearers of each Resident Welfare Association and has requested them to assist/supervise the trimming of tree branches by KEB staff in their respective areas. This has been done after having discussed in detail in the interaction meetings with the Resident Welfare Associations held on 7-10-1997 and 25-9-1998. Instructions have been already issued on 5-11-1998. 2. KEB Officers/Staff have been given stringent guidelines that should be followed in the trimming work. They have been directed to inform the Resident Welfare Association representatives of the programme before actually commencing the tree trimming activity. 3. We are considering using aerial bunched conductoring which can be strung on/around trees themselves and are insulated. This again is an expensive proposition, but we propose to use it in congested areas. Ironically, KEB is blamed for everything. We are criticised for trimming trees, and we are criticised for letting them grow, causing electrical accidents. A set of clippings from the press is enclosed". But, the said reply has not been considered. Further, the provisions of Indian Electricity Act, 1910, Preservation of Trees Act, 1976 and Indian Telegraph Act, 1885 which have a bearing on trimming or cutting of trees near overhead electrical lines, have been either overlooked or ignored. Though the Forest Act, 1963 does not contemplate officers of the Forest Department supervising the pruning of trees by KEB, the learned Judge directed that all pruning work should be carried out by KEB in the presence of Forest Officers. The order does not say, which officer of the Forest Department should accompany KEB at the time of pruning. The order does not say who will decide whether the pruning is within the permissible limits or amounts to destruction of trees. Nor does it say, who will levy fine and who will collect fine. There is absolutely no basis to assume that the employees of KEB are destroying the trees in a systematic or organised manner with the intention of selling them and making money. On the other hand, we are satisfied from the reply issued by the Chairman of the KEB that no further action is warranted in the matter. If there is any stray violation or if there is a specific instance of wanton destruction of trees, there are adequate provisions in the existing laws for punishing the offenders. We, therefore, find that there is no justification to pass such an order. We are also distressed to find that the learned Judge has chosen to lodge a personal complaint to KEB and when KEB replied, proceeded to consider the matter and pass orders thereon. No person can act as the complainant and act as the Judge. The order, cannot, therefore be sustained. Re: Point 2.4 – Validity of orders of reference: 56. The Division Bench, by an Interim Order dated 11-8-1999, passed in W.A. Nos. 5508 and 5509 of 1999, stayed the further proceedings in W.P. Nos. 26353 and 26354 of 1997 and called for records. The orders of reference dated 20-8-1999 and 28-8-1999 were passed by the learned Judge in W.P. Nos. 26353 and 26354 of 1997 after being informed of the order of stay. 57. Once further proceeding

in a writ petition are stayed by the Appellate Bench, the Single Judge ceases to have jurisdiction to deal with the matter or pass any judicial order therein. Any order, whether interim or final, or otherwise, passed in such proceedings which has been stayed, is without jurisdiction. 58. Even after being informed of the stay of the proceedings, the learned Judge has passed the orders of reference, on the ground that the order of reference is not an order on merits. He begins the first reference, by referring to the order of stay and states that"in deference to that order, I am neither proceeding with the hearing nor am I passing any further order on merits. . . .". But he further states that he requested the Counsel to produce a copy of the appeal memo in W.A, Nos. 5508 and 5509 of 1999 and on a perusal thereof found that the basic ground of challenge was"that the Single Judge had no jurisdiction to pass the orders in question, because the writ petitions should be heard by a Division Bench". He then proceeded to pass the order of reference requesting that the Division Bench before whom the appeal is pending should seriously consider the reference and request the Hon'ble Chief Justice to refer the issues involved to a Full Bench for review. In the second order of reference he has referred to some additional grounds for reference and requested the Division Bench and the Chief Justice for appropriate action. The issue involved, as per the orders of reference is whether PIL could be heard by a Single Judge or whether it should be heard only by a Division Bench, the validity of the Notification dated 8-7-1997 and the correctness of the decision of the Division Bench in Amarnathan's case, supra and the decision of the Full Bench in Narasimhasetty's case, supra. The subject-matter of the appeals in W.A. Nos. 5508 and 5509 of 1999 also involved the very questions. There was therefore no need to make an order of reference of the same questions, that too after stay of further proceedings in W.P. Nos. 26353 and 26354 of 1997. When appeals had been filed challenging his jurisdiction to pass orders in public interest, and the Division Bench is seized of the matter, it was not proper for the learned Judge to seek a reference of the questions arising for decision before the Division Bench, to a Full Bench. Nor was it proper for the learned Judge to have observed that the Division Benches which entertained appeals against his interim orders ought to have given him an opportunity of explaining his stand on the question of jurisdiction. A Judge is not a party to the lis. The question of hearing a Judge who passed the order/judgment, to support his order/judgment does not arise. 59. The Supreme Court, in Lala Shri Bhagwan and Another v Ram Chand and Another, has indicated what a Single Judge should do if he feels that the decision of the Division Bench required to be reconsidered. The Supreme Court held:"It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety". In

Tribhovandas Purshottamdas Thakkar v Ratilal Motilal Patel and Others, the Supreme Court held:"When it appears to a Single Judge or a Division Bench that there are conflicting decisions of the same Court, or there are decisions of other High Courts in India which are strongly persuasive and take a different view from the view which prevails in his or their High Court, or that a question of law of importance arises in the trial of a case, the Judge or the Bench passes an order that the papers be placed before the Chief Justice of the High Court with a request to form a special or Full Bench to hear and dispose of the case or the questions raised in the case. For making such a request to the Chief Justice, no authority of the Constitution or of the Charter of the High Court is needed, and by making such a request a Judge does not assume to himself the powers of the Chief Justice. A Single Judge does not by himself refer the matter to the Full Bench: he only requests the Chief Justice to constitute a Full Bench for hearing the matter. Such a Bench is constituted by the Chief Justice. The Chief Justice of a Court may as a rule, out of deference to the views expressed by his colleague, refer to the case; that does not mean, however, that the source of the authority is in the order of reference". In Narasimhasetty's case, supra, a Full Bench of this Court considered the question whether a Single Judge could refer a case before him to a Full Bench. Following the said two decisions of the Supreme Court it held that in the absence of any statutory provision, if a Single Judge feels that a earlier judgment of a Division Bench requires reconsideration, he can place the matter before the Chief Justice to enable him to constitute a larger Bench to examine the question. 60. We have already held that the learned Judge could not have made any judicial order in W.P. Nos. 26353 and 26354 of 1999, after being informed about stay of further proceedings. But as held by the Supreme Court in the aforesaid decisions, a Single Judge can always make a suo motu reference requesting the Chief Justice to consider constitution of a Full Bench to reconsider any decision; and the Chief Justice may, out of deference to the views expressed by his colleague, refer the case to a Full Bench. The Chief Justice has already referred all the matters to this Full Bench. We therefore treat the references dated 20-8-1999 and 28-8-1999 as having been made independent of any pending proceedings, and that only for purpose of convenience, the learned Judge treated them as references made in W.P. Nos. 26353 and 26354 of 1997. 61. The order of reference dated 20-8-1999 also relates, and refers to some grievances regarding assignment/allotment of judicial and administrative work by several Chief Justices of this Court. They are not relevant to the reference or points in issue. Such extraneous matters ought not to have found a place in a judicial order. We express our dismay that the learned Judge has chosen the forum of a judicial order to air his personal grievances. We abstain from referring to those grievances or considering them, as they are neither relevant nor justiciable. Re: Point 3.1 – Maintainability of W.P. No. 28799 of 1999: 62. Mr. Lakshmisagar, contends that the learned Judge could not have assumed jurisdiction to pass orders, which could only be passed by a Division Bench in PIL, having regard to the Notification dated 8-7-1997, which specifically directed that such matters could be dealt with and decided only by Division Benches. As there was no challenge to such illegal

orders, by the concerned authorities as a citizen interested in the institution of judiciary and welfare of the State, he decided to file a petition to set aside all orders which were passed by the learned Single Judge contrary to the Notification dated 8-7-1997. Reliance is placed on several decisions of the Supreme Court in this behalf. We will briefly refer to them. 63. In Shivdeo Singh v State of Punjab, the Supreme Court held that the High Court has inherent power to review its own orders, under Article 226 of the Constitution. It held that"There is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it". 64. In Dwarka Nath v Income-tax Officer, Special Circle, D Ward, Kanpur and Another, the Supreme Court held that the High Court in exercise of jurisdiction under Article 226 of the Constitution, can not only issue prerogative writs, but also issue directions, orders or writs and also mould the reliefs to meet the peculiar and complicated requirements of the Country. In A.R. Antulay v R.S. Nayak, the Supreme Court observed that once it was found that the direction given by it was not proper, the Court's inherent power can be exercised to remedy the mistake; and any injustice done could be corrected by applying the principle"an act of the Court shall prejudice no one". In S. Nagaraj and Others v State of Karnataka and Another, Common Cause, A Registered Society v Union of India and M.M. Thomas v State of Kerala, the Supreme Court held that the High Court as a Court of Record has plenary jurisdiction and has the power and duty to correct any error apparent on the face of its record; and the power of the High Court under Article 226 is a plenary power not fettered by any legal restraints; and if the High Court in exercise of these powers has committed a mistake, it has the plenary power to correct its own mistake, by reviewing its orders. 65. The decision in Shivdeo Singh's case, supra, is of no assistance. In that case 'A' filed a writ petition for cancellation of an order of allotment made in favour of 'B', without impleading 'B' as a party. The High Court cancelled the order made in favour of 'B'. Subsequently, 'B' filed a petition under Article 226 of the Constitution for impleading him as a party in writ petition filed by 'A' and rehearing the whole matter. The Supreme Court held that the second writ petition by 'B' was maintainable and the High Court did not act without jurisdiction in reviewing its previous order at the instance of 'B' who was not a party to the previous writ proceedings. The other decisions are also of no assistance as there is no dispute that the High Court as a Court of plenary jurisdiction has the power to review its orders to prevent miscarriage of justice and correct mistakes. 66. The question is whether a Public Interest Litigation can be filed to set aside all orders passed by a Single Judge during a specified period (8-7-1997 to 30-7-1999) in any or all proceedings involving questions of public interest, on the ground that the orders so passed are without jurisdiction, being contrary to Notification relating to allocation of judicial work by the Chief Justice. The writ petition (W.P. No. 28799 of 1999) is filed on the assumption that orders passed without jurisdiction are nullities and therefore they need not be challenged individually, and that an omnibus declaration can be sought about their validity. 67. But the difference between

lack of 'competence' and lack of jurisdiction has been lost sight of in seeking such a declaration. While inherent lack of jurisdiction cannot be cured, a mere lack of jurisdiction can be cured by consent or waiver. A Single Judge of the High Court has the 'competence' to decide a writ petition having regard to Section 9(xii) of the H.C. Act. But he will get the jurisdiction to hear and decide the writ petition only if the writ petition of the specified category is allocated to him by the Chief Justice. The decision on a writ petition decided by a Single Judge, without allocation under the Roster, will be one without jurisdiction. 68. The position is somewhat similar to a Civil Court having competence to entertain a particular class of cases, but not having the territorial jurisdiction to try the suit. The difference is brought out in Hira Lal Patni v Kali Nath, wherein the Supreme Court rejected the challenge to the decision of the Bombay High Court, in an execution proceedings on the ground it lacked territorial jurisdiction and therefore void and unexecutable. The Supreme Court held:"It is well-settled that the objection as to local jurisdiction of a Court does not stand on the same footing as an objection to the competence of a Court to try a case. Competence of a Court to try a case goes to the very root of the jurisdiction and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand an objection as to the local jurisdiction of a Court can be waived and this principle hag been given a statutory recognition by enactments like Section 21 of the Code of Civil Procedure. . . . The validity of a decree can be challenged in execution proceedings only on the ground that the Court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seizin of the case because the subject-matter was wholly foreign to its jurisdiction. ....." (emphasis supplied) Pecuniary jurisdiction and territorial jurisdiction are not regarded as falling under inherent jurisdiction of Civil Courts. Objections on the ground of lack of these jurisdictions are technical in nature and unless raised at the earliest opportunity, will not be entertained to non-suit a plaintiff. On the other hand, objection on the ground of lack of inherent jurisdiction can be raised at any time, and cannot be waived. 69. Similarly, if any order is passed in a writ petition by a Single Judge of a High Court, who has competence to hear and dispose of a writ petition, but who was not allocated the subject portfolio by the Chief Justice, then the order is one without jurisdiction, but not one without inherent jurisdiction. Such an order not being a void order, can only be challenged in appeal. If they are interim orders, they can also be challenged at the final hearing of the main petition. But a writ petition (PIL or otherwise) for a declaration that all such orders passed by a Single Judge in violation of allocation of judicial work, are illegal and unenforceable, is misconceived and not maintainable. In Naresh Shridhar Mirajkar v State of Maharashtra, the Supreme Court has held that the appropriate remedy against a judicial order is by way of appeal and not by a writ petition. 70. To hold otherwise may lead to chaotic situations. Day in and day out cases which are borderline cases (which can either be classified as Private Interest Litigation or Public Interest Litigation) are assigned to Single Judges, if the Advocates filing them classify them as non-PIL cases and the Registry accepts such classification. The allocation to Single Judges by the Chief Justice is by categorising writ petitions subject-

wise, that is, Education, Labour, Service, Tax, Local Bodies, Motor Vehicles, Land Revenue, Land Reforms, General Miscellaneous etc. It is not uncommon for a writ petition to fall under more than one category. For example, a matter relating to property tax levied by a Municipality may fall under 'Tax' or 'Local Bodies'. A matter relating to caste certificate of an employee may fall under 'service' or 'General Miscellaneous' A case relating to pollution by motor vehicles may fall under 'motor vehicles' or under 'General Miscellaneous'. Normally the categorisation made by Advocates is accepted by the Registry, if it is proper, or the Registrary may itself categorise the matter for listing before the 'portfolio' Judge. If the matter generally falls under his portfolio and neither party objects to the categorisation, the Single Judge before whom the matter is listed will hear and disposes of the matter. Among such cases, there may be several which ought to have been, more properly categorised under a different head and allocated to a different 'portfolio' Judge. If the contention of Mr. Lakshmisagar is accepted and the contention is taken to its logical conclusion, the decisions rendered in such cases are always open to challenge as having been rendered without inherent jurisdiction. No Court can have such uncertainty and lack of finality. 71. In this case when W.P. Nos. 26353 and 26354 of 1997 were filed, they were not PIL and they were categorised as 'Motor Vehicles' and rightly listed before the learned Judge. When the prayer was amended, the Registry did not treat the petitions as PIL and list them before the Division Bench nor bring the matter to the notice of the Chief Justice for appropriate orders. The matters were treated as part-heard and were continued to be listed before the learned Judge. None of the respondents protested before the learned Judge, that the matters had ceased to be a Private Interest Litigation and the interim orders that were being passed were of a nature that could be passed only by a Division Bench and the eases should be placed before a Division Bench. On the other hand, at least in the case of some orders, there was enthusiastic compliance and in respect of some orders, reluctant compliance. Though 56 interim orders were passed from 22-9-1997 to 30-7-1999, only a few have been challenged. The Bangalore City Corporation against whom most of the orders are passed has chosen to challenge only one order dated 31-3-1999 (Order 37 in para 5 above). K.E.B. has challenged only one order dated 30-7-1999 (Order 56 in para 5 above); and the State, Trans-port Department and Police Department have challenged 14 orders, that is orders at Sl. Nos. 1 to 12 and 55 and 51 in para 5 above. B.D.A. and B.W.S.S.B. have not challenged any order at all. Even in regard to the orders that are challenged, the appeals have been filed only in 1999, after the decision in Amarnathan's case, supra. Though the interim orders received wide publicity, no public spirited citizen chose to challenge any of the orders, till Mr. Lakshmisagar filed an omnibus writ petition on 10-8-1999. In the circumstances, it is not possible to entertain any writ petition challenging the entire lot of 56 orders passed by the learned Judge in W.P. Nos. 26353 and 26354 of 1997 as also all other orders that were passed in other cases which are of the nature of Public Interest Litigation, on the ground that they are lacking in inherent jurisdiction. W.P. No. 28799 of 1997 is not therefore maintainable. Re: Point 3.2 – Whether filing of W.P. No. 28799 of 1999 amounts to contempt:

72. Mr. Bhat, the complainant contends that filing a writ petition for declaration that all orders passed in Public Interest, by a learned Single Judge between 8-7-1997 to 30-6-1999, are illegal and making allegations against the learned Judge amounts to contempt. The averments made in the said writ petition to which exception is taken as being objectionable are: that the learned Judge has passed a series of illegal orders, that the petitioner (Mr. Lakshmisagar) had doubts about the legality of the orders, that the orders are lacking in jurisdiction and do not enjoy the status of judicial orders; that the learned Judge has assumed the role of legislature, subordinate legislature and executive; that the orders are not supported in law or on facts, but are passed on personal assumption and impressions; and that the orders have been passed in utter disregard of enacted legal provisions and procedure established by law. The complainant contends that these averments in the petition and the prayer together amount to scandalising the Court and lowering the majesty and authority of this Court; and that such a writ petition also interferes or obstruct the due course of judicial proceedings and administration of justice. 73. In Chetak Construction Limited v Om Prakash and Others, the Supreme Court considered a case where an appeal came up before a learned Judge of the Madhya Pradesh High Court. An application was filed on behalf of the appellant requesting the Judge to recuse or relieve himself from hearing the case and post the case before some other Bench, on the ground that one of the respondents was a tenant of a premises under the said Judge. The learned Judge recused himself and did not hear the appeal. But, he however made a 'reference' to the Supreme Court to hear the said appeal and also suggested that contempt proceedings should be initiated against the appellant and some of his lawyers. The Supreme Court rejected the said suggestion on the following reasoning:"Contempt of Court jurisdiction is a special jurisdiction. It has to be used cautiously and exercised sparingly. It must be used to uphold the dignity of the Courts and the majesty of law and to keep the administration of justice unpolluted, where the facts and circumstances so justify. "The corner stone of the contempt law is the accommodation of two constitutional values – the right of free speech and the right to independent justice. The ignition of contempt action should be substantial and mala fide interference with fearless judicial action, not fair comment or trivial reflections on the judicial process and personnel" (see Baradakanta Mishra v Registrar of Orissa High Court and Another). Long ago in Queen v Grey, at 40 it was said that 'Judges and Courts are alike open to criticism and if reasonable argument is offered against any judicial act as contrary to law or to the public good, no Court could or would treat it as contempt of Court'. Therefore, contempt jurisdiction has to be exercised with scrupulous care and caution, restraint and circumspection. Recourse to this jurisdiction, must be had whenever it is found that something has been done which tends to affect the administration of justice or which tends to impede its course or tends to shake public confidence in the majesty of law and to preserve and maintain the dignity of the Court and the like situations. The respect for judiciary must rest on a more surer foundation than recourse to contempt jurisdiction'." (emphasis supplied) 74. We have carefully considered the petition averments and prayer in W.P. No. 28799 of 1999.

The writ petition does not contain any statement or averment which tends to scandalise the Court or lower the dignity or authority of the Court or tend to shake public confidence in Courts and the majesty of law. Nor does it prejudice or interfere with any judicial proceedings or administration of justice. On the other hand, the object and intention of the petition appears to he to maintain the majesty of law and independence of judiciary. The challenge to the orders passed by the learned Judge is on the ground that they violate the allocation of judicial work by the Chief Justice. There is no personal attack against the character, capacity, honesty or integrity of any Judge of this Court, To say that the orders passed by a Judge are illegal and without jurisdiction, will not amount to contempt. The fact that the writ petition (W.P. No. 28799 of 1999) is ultimately found to be not maintainable is not a ground to suspect the bona fides or commitment of Mr. Lakshmisagar to the cause of justice. 75. The respondent has submitted that he has the utmost respect to the High Court and all its Judges, that nothing stated in W.P. No. 28799 of 1999, is intended to cast any aspersions on the learned Judge or to show any disrespect to the learned Judge, or scandalise the Court and that his intention in filing the petition is only to uphold the majesty of law and dignity of the Institution. The facts and circumstances, the restraint used in the language of the writ petition, the responsible manner in which the said petition was argued, the concern shown by the petitioner and his Counsel for safeguarding the majesty and respect of the Institution, clearly demonstrate that the intention of Mr. Lakshmisagar was not to scandalise or lower the authority of this Court, nor prejudice or interfere with the due course of any judicial proceedings or administration of justice. We, therefore, find that the contempt petition has no merit. Re: Points 4.1 to 4.5 – Validity of Notification dated 8-7-1997: 76. On the orders of the Chief Justice, a Notification dated 8-7-1997 was issued in regard to listing of PIL matters. The relevant portion thereof reads as follows: "All writ petitions filed as Public Interest Litigation shall, with effect from 11-8-1997 be listed before the Division Bench dealing with the particular subject as per the sitting list". 77. The validity of the said Notification dated 8-7-1997 issued by the Registrar (Judicial) of the Karnataka High Court in pursuance of the order made by the Hon'ble Chief Justice was challenged in a Public Interest Litigation. The decision of the Division Bench in the said matter is in A.V. Amarnathan's case, supra. The Division Bench speaking through one of us (Bhaskar Rao, J., as he then was) after an exhaustive reference and analysis of the relevant provisions and decisions on the point, held as follows: "The principles laid down by the various High Courts in their judgments stated supra are approved by the Apex Court and became the law of the land. By reading provisions i.e., Sections 18 and 19 of the Mysore High Court Act, 1884, and Section 10(v) of the Karnataka High Court Act, 1961 along with Rule 6 of Chapter III, the constitution of Benches and allotment of judicial work, and Rule 7 of Chapter XV, along with Article 225 of the Constitution of India, it is evident that the Chief Justice is the sole authority for constitution of Benches and distribution of work among his brother Judges of the High Court. Therefore, posting of the Public Interest Litigation, writ petitions before the Division Bench instead of a Single Judge

is a sole prerogative of the Chief Justice". 78. In his orders of reference, the learned Judge has expressed the view that the decision of the Division Bench in Amarnathan's case, supra, requires reconsideration as it does not consider the effect of Section 9(xii)(a) of the H.C. Act and also fails to take note of the decision of the Full Bench of this Court in Krishnappa's case, supra. Section 9 lists the powers of the High Court to be exercised by a Single Judge. Item (xii) of Section 9 relates to exercise of power under (a) clause (1) of Article 226 of the Constitution except where such power relates to the issue of a writ in the nature of habeas corpus; and (b) Article 227 of the Constitution of India. In Krishnappa's case, supra, the Full Bench held as follows: "The effect of amendment of the High Court Act, 1961, by the Amendment Act, 1973, is that, on and after 16th July, 1973, petitions under Article 226 of the Constitution (except those which relates to issue of a writ in the nature of habeas corpus), petitions under Article 227 of the Constitution and cases transferred to the High Court under Article 228 of the Constitution, should be heard and disposed of, in the first instance, by Single Judges from whose decisions appeals lie to Division Benches". 79. The learned Counsel appearing for Mr. Krishna Bhat (Mr. N.D.R. Ramachandra Rao and Mr. P.R. Ramesh), as also Sri M.G. Kumar and Smt. Laila Ollapally who requested an opportunity to make submissions in support of the reference, submitted that Section 9(xii) of the H.C. Act required all writ petitions other than habeas corpus petitions to be heard by Single Judges; that the power and prerogative of the Chief Justice to constitute Benches and allocate work should therefore be read subject to the said statutory provision; and that therefore the Chief Justice is bound to post all writ petitions (other than habeas corpus petitions) including PIL only before Single Judges and the Notification dated 8-7-1997 issued on the orders of the Chief Justice, directing that all writ petitions of the nature of PIL should be posted before a Division Bench, violated the provisions of Section 9(xii) and therefore not valid. 80. On the other hand, the learned Advocate General appearing for the State, submitted that the Chief Justice had the absolute prerogative of constituting Benches and allocating work to his brother Judges, that the allocation of PIL to Division Benches was within his discretion and it is not open to challenge. In regard to argument based on Section 9(xii), he contended that the said provision was introduced with effect from 16-7-1973 by Act 12 of 1973; that when Section 9(xii)(a) was introduced, there was no cases known as PIL; that PIL came into existence only after the Supreme Court rendered its decision in Sunil Batra v Delhi Administration and Others; in the year 1978; that PIL is a totally new kind of litigation different from traditional writ litigation; and therefore, Section 9(xii)(a) which refers to writ petitions cannot be read as referring to PIL and consequently PIL should be considered as falling under the residuary provision, that is Section 10(v) which requires that all matters not expressly provided in the H.C. Act or any other law for the time being in force should be heard by a Division Bench of two Judges. 81. Sri R.N. Narasimha Murthy, appearing for Mr. Lakshmisagar and the Counsel appearing for several authorities, made yet another submission in support of the Notification dated 8-7-1997. They contended that the powers of the Chief Justice to constitute Benches and allocate

work, is traceable to Articles 215, 225 and 226 of the Constitution; and, therefore, any provision in any statute concerning High Court administration must yield to the powers of the Chief Justice which flow from the Constitution itself; and, therefore, Section 9(xii)(a) should yield to the prerogative to the Chief Justice and should be read subject to the absolute discretion of the Hon'ble Chief Justice to constitute Benches and allocate work. Reliance is placed on the following observations of the Full Bench of this Court in Narasimhasetty's case, supra: "In view of the said pronouncement of law by the Supreme Court, since the existence and proper functioning of an independent judiciary, like the High Court, is a part of the essential basic structure of our Constitution, therefore, all the legislative Acts and the administrative or executive orders concerning the High Court administration must conform with the law laid down by the Supreme Court. If there be any irreconcilable statutory provision or order, then the same has to be read down so as to give supremacy to the powers of the Chief Justice in constituting the Benches and allocation/distribution of judicial work among them. All the provisions of the High Court Act and the rules framed thereunder including the provisions for intra-Court appeal has to be read as being subject to the said power of the Chief Justice". 82. We will first consider the scope of the power and authority of the Chief Justice, and the effect of orders passed by any Single Judge or Division Bench in matters which are not allocated to him or them, by the Chief Justice. The question is well-settled having regard to several decisions of the Supreme Court and High Court. 82.1 In State v Devi Dayal, a Division Bench of the Allahabad High Court held thus: ". . . . .the High Court as a whole consisting of the Chief Justice and his companion Judges has got the jurisdiction to entertain any case either on the original or on the Appellate or on the revisional side for decision and that the other Judges can hear only those matters which have been allotted to them by the Chief Justice or under his directions. It, therefore, follows that the Judges do not have any general jurisdiction over all the cases which the High Court as a whole is competent to hear and that their jurisdiction is limited only to such cases as are allotted to them by the Chief Justice or under his directions". ". . . .It is only the Chief Justice who has the right and power to decide which Judge is to sit alone and what cases such Judge can decide; further, it is again for the Chief Justice to determine which Judges shall constitute Division Benches and what work those Benches shall do. Under the rules of this Court, the rule that I have quoted above, it is for the Chief Justice to allot work to Judges and Judges can do only such work as is allotted to them. It is not open to a Judge to make an order, which could be called an appropriate order, unless and until the case in which he makes the order has been placed before him for orders either by the Chief Justice or in accordance with his directions. Any order which a Bench or a Single Judge may choose to make in a case that is not placed before them or him by the Chief Justice or in accordance with his directions is an order which, in my opinion, if made, is without jurisdiction". 82.2 In State of Maharashtra v Narayan Shamrao Puranik, the Supreme Court observed thus: "The Chief Justice is the master of the roster. He has full power, authority and jurisdiction in the matter of allocation of business of the High Court, which flows not

only from the provisions contained in sub-section (3) of Section 51 of the Act, but inheres in him in the very nature of things". 82.3 The Madras High Court in Mayavaram Financial Corporation Limited v Registrar of Chits, observed thus: "The Hon'ble the Chief Justice has the inherent power to allocate the judicial business of the High Court including who of the Judges sit alone and who should constitute the Bench of two or more Judges. No person can claim as a matter of right that this petition be heard by a Single Judge or a Division Bench or a particular Single Judge or a particular Division Bench. No Judge on a Bench of Judges will assume jurisdiction unless the case is allotted to him or them under the orders of the Hon'ble the Chief Justice". 82.4 In Sohan Lal Baid v State of West Bengal, a Division Bench of the Calcutta High Court held thus: "The foregoing review of the constitutional and statutory provisions and the case-law on the subject leaves no room for doubt or debate that once the Chief Justice has determined what Judges of the Court are to sit alone or to constitute the several Division Courts and has allocated the judicial business of the Court amongst them, the power and jurisdiction to take cognizance of the respective classes or categories of cases presented in a formal way for their decision, according to such determination, is acquired. To put it negatively, the power and jurisdiction to take cognizance of and to hear specified categories or classes of cases and to adjudicate and exercise any judicial power in respect of them is derived only from the determination made by the Chief Justice in exercise of his constitutional, statutory and inherent powers and from no other source and no cases which is not covered by such determination can be entertained, dealt with or decided by the Judges sitting singly or in Division Courts till such determination remains operative". 82.5 In Inder Mani v Maktheswari Prasad, the Supreme Court has held as follows: "It is the prerogative of the Chief Justice to constitute Benches of his High Court and to allocate work to such Benches. Judicial discipline requires that the puisne Judges of the High Court comply with directions given in this regard by their Chief Justice. In fact it is their duty to do so. Individual puisne Judges cannot pick and choose the matters they will hear or decide nor can they decide whether to sit singly or in a Division Bench". 82.6 In Sanjay Kumar Srivastava v Acting Chief Justice, the Allahabad High Court observed thus: "In view of the above, it is clear that the Chief Justice enjoys a special status not only under Constitution but also under Rules of Court, 1952 made in exercise of powers conferred by Article 225 of the Constitution. The Chief Justice alone can determine jurisdiction of various Judges of the Court. He alone can assign work to a Judge sitting alone and to the Judges sitting in Division Bench or to Judges sitting in Full Bench. He also has the jurisdiction to decide which case will be heard by a Judge sitting alone or which case will be heard by two or more Judges. The conferment of this power exclusively on the Chief Justice is necessary so that various Courts comprising of the Judges sitting alone or in Division Bench etc., work in a co-ordinated manner and the jurisdiction of one Court is not overlapped by other Court. If the Judges were free to choose their jurisdiction or any choice was given to them to do whatever case they may like to hear and decide, the machinery of the Court would cease by generation of internal strife on account

of hankering for a particular jurisdiction or a particular case. The nucleus for proper functioning of the Court is the"self" and "judicial" discipline of Judges which is sought to be achieved by Rules of Court by placing in the hands of the Chief Justice full authority and power to distribute work to the Judges and to regulate their jurisdiction and sittings". 82.7 The Supreme Court in State of Rajasthan v Prakash Chand, held thus:". . . . Therefore, from a review of the statutory provisions and the cases on the subject as rightly decided by various High Courts, to which reference has been made by us, it follows that no Judge or a Bench of Judges can assume jurisdiction in a case pending in the High Court unless the case is allotted to him or them by the Chief Justice. Strict adherence of this procedure is essential for maintaining judicial discipline and proper functioning of the Court. No departure from it can be permitted. If every Judge of a High Court starts picking and choosing cases for disposal by him, the discipline in the High Court would be the casualty and the administration of justice would suffer. No legal system can permit machinery of the Court to collapse. The Chief Justice has the authority and the jurisdiction to refer even a part-heard case to a Division Bench for its disposal in accordance with law where the rules so demand. It is complete fallacy to assume that a part-heard case can under no circumstances be withdrawn from the Bench and referred to a larger Bench, even where the rules make it essential for such a case to be heard by a larger Bench". 82.8 In Narasimhasetty's case, supra, a Full Bench of this Court held as follows:"It also goes without saying that while exercising powers of allocation/distribution of judicial work among the Benches, it is open for the Chief Justice to devise his own method of classification of cases to ensure quick and effective disposal of cases and for effective administration of justice. Such classifications can be based on any intelligible criteria like the nature of disputes involved, valuation of the subject-matter, age of the case, the areas from which the cases are arising, as also as to whether the cases pertain to private or public litigation, whether the jurisdiction to be exercised is revisional, appellate or original, whether the cases are to be instituted on regular petitions or on information received from known or unknown sources and the like, keeping in view the recent judgment of the Supreme Court in the case of Prakash Chand, supra. But it needs to be stressed here that the exercising of the said power by the Chief Justice by deviating from the normal rule based on the regular practice of the Court (Commissioner of Income-tax, Bombay City v R.H. Pandit, Managing Trustees of Trust, Bombay, para 6) or the statutory provisions must stand the test of reason and objectivity since such exercise will be always subject to mandates of Article 14 of the Constitution of India which absolutely prohibits the exercise of powers in a discriminatory, arbitrary or mala fide manner and always entitle the aggrieved party to seek remedy against the same by approaching the appropriate forum. No Judge of the High Court can claim to himself any inherent power to take cognizance of a particular cause either on being moved or suo motu unless it is assigned by the Chief Justice to the Judge concerned. The extent of power of the Chief Justice and that of the Judges of the High Court has to be now treated as authoritatively determined and cleanly delineated. But it may be clarified that if any learned Judge, either

suo motu or on the basis of information coming to his possession prima facie finds that any matter not concerning the jurisdiction assigned to him, needs to be examined in the judicial side of the High Court, thereby recording his opinion in writing, he may refer the same to the Chief Justice for being placed before an appropriate Bench". 82.9 Having referred to the above cases, we can do no better than to extract the conclusions of the Supreme Court in Prakash Chand's case, supra, in answering the question relating to the scope of powers of the Chief Justice:"(1) That the administrative control of the High Court vests in the Chief Justice alone. On judicial side, however, he is only the first amongst the equals. (2) That the Chief Justice is the master of the Roster. He alone has the prerogative to constitute Benches of the Court and allocate cases to the Benches so constituted. (3) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions. XXX XXX XXX (6) That the puisne Judges cannot "pick and choose" any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate order of the Chief Justice. (7) That no Judge or Judges can give directions to the Registry for listing any case before him or them which runs counter to the directions given by the Chief Justice". It is significant that all these decisions only emphasise that the Chief Justice has the prerogative of constituting Benches and allocating work. But, none of the above decisions deal with the question of fixing the quorum, that is the minimum number of Judges required to decide each type of cases. 83. The writ jurisdiction under Article 226 of the Constitution, and the appellate and revision jurisdictions under the Codes of Civil and Criminal Procedure, are conferred on the 'High Court' and not on any individual Judge or Bench of the Court. If there was no statute or rules governing the matter, all appeals, revisions and writ petitions have to be heard and disposed of by the entire Court. Having regard to the number of cases filed and the time required to hear them, it is not feasible for the entire Court to sit together for deciding all the cases. Hence, it is necessary to distribute the judicial work of the High Courts to Benches of two Judges and Single Judges, depending on the comparative seriousness of different category of cases. This requires exercise of three administrative functions: (a) fixing a quorum or minimum number of Judges, required to decide different categories of cases; (b) constitution of Benches, that is the number of Benches of two Judges and number of Benches of Single Judges, required for deciding the cases; and deciding who will sit in the Benches of two Judges and Single Judges and who will sit in Full Benches; (c) allocation of judicial work to each of the Benches – Full, Division or Single Judge. These three functions relating to the practice and procedure of the Court, are parts of the power of administration of justice. 84. To begin with, these functions were regulated by either rules framed by the respective High Courts or by statutes passed by the sovereign or the sovereign legislatures. The quorum for deciding different categories of cases were laid down in such rules or in the statutes. But, the two other functions, that is, constitution of Benches and allocation of work were not capable of being regulated by any rule of statutory provision, as they involved constant changes, depending upon the number of cases pending at a given point of time, number of Judges

available, experience and expertise of individual Judges in specific fields and other relevant circumstances. They involved exercise of administrative discretion in day-to-day management. Hence, the rules or statutes entrusted to the Chief Justice, the functions of constitution of Benches and allocation of work without prescribing any guidelines or parameters. These two functions have therefore been considered as the prerogative of the Chief Justice. 85. Article 225 of the Constitution provided for the continuance of the rules and statutes in regard to existing High Courts until other statutory provisions are made by the appropriate legislature. The relevant portion of Article 225 is extracted below.-"Jurisdiction of existing High Courts.–Subject to the provisions of this Constitution and to the provisions of any law of the appropriate legislature made by virtue of powers conferred on that legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Courts and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution". In Umaji v Radhika Bai, the Supreme Court stated thus:"Various statutes provide for appeals to the High Court. When the expression "High Court" is used, it only means the High Court acting through one Judge or a Division Court consisting of two or more Judges as may be provided by the rules of Court unless any enactment specifically provides for a particular number of Judges to hear any particular matter". (emphasis supplied) In American Jurisprudence (Volume 14, page 282, para 57) it is stated thus:"The question as to the number of Judges required to be present in order to authorize the legal transaction of business by a Court, as a general rule, is to be determined from the constitutional or statutory provisions creating and regulating Courts". 86. Though the Karnataka High Court is not an 'existing High Court' under Article 225, as it came into existence on 1-11-1956, the principle underlying Article 225 will apply to this Court. Let us briefly refer to the position in regard to the High Court of Karnataka. 86.1 In the State of Mysore, from 1862 to 1863, the highest Judicial Court was the Court of Judicial Commissioner. Subsequent to rendition, there was a Chief Court consisting of a Chief Justice and two puisne Judges from 1881. The Maharaja of Mysore passed the Mysore Chief Court Regulation, 1884, on 23-5-1884. Section 12 dealt with original jurisdiction and prescribed the quorum as a Single Judge. Section 13 dealt with appeals, revisions and references from orders of Single Judges and prescribed the quorum as a Bench constituting of two Judges or a Full Bench. Section 15 dealt with other appeals and confirmation of sentence of death and prescribed the quorum as Bench consisting of not less than two Judges. Section 18 deals with the powers which may be conferred upon the Chief Justice. It reads as follows:"Powers which may be conferred upon Chief Justice.-The State Government may, whenever it deems fit to do so, confer upon a Chief Justice all or any of the powers hereunder in this section specified and may, from time to time, cancel any such order. The Chief Justice empowered under this section shall exercise all the powers conferred upon him under this section and the exercise of such powers

by him shall be deemed to be the exercise of the same by the High Court under this Act. The powers conferred to in this section are: XXX XXX XXX

The distribution of the work of the High Court between himself and other Judges of the said Court".

The Chief Court became Mysore High Court and the regulation became Mysore High Court Act, 1884, by amendment under Act XII of 1930.

86.2 State of Mysore was a Part 'B' State under the Constitution. When the States were re-organised, a new State to be known as State of Mysore was formed under Section 7 of the State Re-organisation Act, 1956 as from 1-11-1956. From that day, a new High Court was established for the State of Mysore under Section 49(2) and the existing High Court (of the Part 'B' State) was abolished. Section 54 relating to practice and procedure in High Court and Section 57 relates to powers of Judges, are extracted below: "54. Practice and Procedure.–Subject to the provisions of this part, the law in force immediately before the appointed day with respect to practice and procedure in the High Court for the corresponding State shall, with necessary modifications, apply in relation to the High Court for a new State, and accordingly, the High Court for the new State shall have all such powers to make rules and orders with respect to practice and procedure as are, immediately before the appointed day, exercisable by the High Court for the corresponding State: Provided that any rules or orders which arc in force immediately before the appointed day with respect to practice and procedure in the High Court for the corresponding State shall, until varied or revoked by rules or orders made by the High Court for a new State, apply with the necessary modifications in relation to practice and procedure in the High Court for the new State as if made by that Court. 57. Power of Judges.–The law in force immediately before the appointed day relating to the powers of the Chief Justice, Single Judges and Division Courts of the High Court for the corresponding State and with respect to matters ancillary to the exercise of those powers shall, with the necessary modifications, apply in relation to the High Court for a new State". Thus, the provisions of the Mysore Chief Court Regulation, 1884 (which later became Mysore High Court Act, 1884) continued to apply to the New High Court of Mysore. 86.3 The High Court of Mysore framed "High Court of Mysore Rules, 1959" in exercise of the powers conferred by Article 225 and Section 54 of the State Re-organisation Act, 1956 and Section 19 of the Mysore High Court Act, 1884, with the previous approval of the State Government, in regard to the practice and procedure to be followed at the High Court. The said rules came into effect on 5-11-1959. Chapter III of the said rules deals with constitution of Benches. Rules 1 and 3 of Chapter III enumerated the matters to be heard and decided by a Bench consisting of not less than two Judges. Rules 2 and 4 of Chapter III enumerated the matters to be heard and decided by a Single Judge. Rule 6 empowered the Chief Justice to constitute Benches and allocate judicial work. 86.4 The State legislature enacted the Mysore High Court Act, 1961 for regulating the business and the exercise of powers in the High Court of the State in relation

to the administration of justice and to provide for its jurisdiction. It came into effect on 1-2-1962. Section 14 of the H.C. Act repealed Sections 12, 13 and 15 (which dealt with the quorum) and certain other provisions of Mysore High Court Act, 1884. As Sections 5 to 10 of the H.C. Act dealt with quorum, Rules 1 to 4 of Chapter III of the High Court of Mysore Rules, 1959, were omitted by High Court of Mysore (Amendment) Rules, 1962, with effect on 1-2-1962. The State of Mysore was renamed as 'Karnataka' in the year 1973 and the name of the High Court was changed as High Court of Karnataka. 86.5 Under Entry 3 and Entry 65 of List II of the Seventh Schedule to the Constitution originally stood thus: "3. Administration of justice, constitution and organisation of all Courts, except the Supreme Court and the High Court; Officers and servants of the High Court, procedure in Rent and Revenue Courts; fees taken in all Courts except the Supreme Court. 65. Jurisdiction and powers of all Courts, except the Supreme Court, with respect to any of the matters in the list". By the Constitution (Forty-second Amendment) Act, 1976, Entry 3 in List II was amended and Entry 11-A in List III was inserted. The amended entries read as follows from 3-1-1977: List II, Entry 3: "Officers and servants of the High Court; procedure in Rent and Revenue Courts, fee taken in all Courts except the Supreme Court". List III Entry 11-A: "Administration of justice; Constitution and organisation of all Courts, except the Supreme Court and High Court". 86.6 The State legislature had exclusive legislative competence to make laws in regard to administration of justice (which included practice and procedure to be followed by the High Court), since the subject, 'administration of justice' was included in the State List, till 3-1-1997. The State legislature was therefore competent to enact the H.C. Act to regulate the jurisdiction and power of the High Court and prescribe the quorum for constitution of Benches. The power of the State legislature to make laws in regard to administration of justice is however circumscribed by the express provisions in the Constitution relating to High Court. Any law passed by the State legislature in regard to 'administration of justice' cannot alter or limit any jurisdiction and power conferred on the High Courts by the Constitution. The H.C. Act does not alter or limit the jurisdiction and power conferred on the High Court by the Constitution. At this juncture it is relevant to notice the difference between conferment of power and exercise of power. The Supreme Court in Umaji's case, supra, has differentiated between the two as follows: "Conferment of power is one thing while the exercise of such power is a wholly different thing. Articles 226 and 227 confer certain powers upon the High Courts while Article 225 of the Constitution deals with the power to make rules for the exercise of powers possessed by the existing High Courts. The rule-making power extends to all jurisdiction and powers possessed by the existing High Courts, whether at the date of their Letters Patent or of the Government of India Act of 1915-1919 or of the Government of India Act, 1935, or conferred upon it by the Constitution itself or subsequent to the commencement of the Constitution itself or subsequent to the commencement of the Constitution by any amendment of the Constitution or any law made by the appropriate legislature. According to the Full Bench, the rule-making power under Article 225 would not extend to the exercise of jurisdiction under Articles

226 and 227 because these Articles contain in-built rule-making power. This is equally incorrect. Such a rule making power is neither expressly provided for nor implied in either of those two Articles. The power to make rules for the exercise of jurisdiction under Articles 226 and 227 by the existing High Courts is contained in Article 225 only". 86.7 Prescribing the quorum is a matter relating to practice and procedure of the High Court falling under 'administration of justice'. It is not a matter falling under 'Constitution and Organisation of the High Courts' which is within exclusive power of the Parliament under Entry 78 of List I; nor is it a matter that affects any power of the High Court or the Chief Justice conferred under the Constitution. The Supreme Court in State of Bombay v Narottamdas Jethabhai and Another, observed thus: "Where there was no separate provision authorising the making of laws with respect to jurisdiction and powers of Courts and therefore the authority to make laws with respect to the jurisdiction and powers of Court had of necessity to be found in the words"administration of justice" it might be urged that jurisdiction and powers of Courts have to be spelt out of the words "administration of justice"." Prescribing of the quorum and prescribing the powers of Single Judges and Division Benches has always been done by the legislature ever since 1884 in the State and it was never part of the prerogative of the Chief Justice. 87. The quorum is regulated by special statutes or by the provisions of the Karnataka High Court Act, 1961. Several statutes providing for appeals or references, specify the minimum quorum. For example, Section 260-B of the Income-tax Act, 1961 requires an appeal filed before the High Court should be heard by not less than two Judges; Section 259 of the Income-tax Act, 1961 provides that a reference shall be heard by not less than two Judges; Section 17 of the Indian Divorce Act, 1869, requires that cases for confirmation of a decree for dissolution of marriage under the said Act should be headed by a Bench of three Judges; and there are several other enactments which specify the quorum for hearing appeals or references under them. 88. Apart from the special provisions in various enactments in regard to quorum, the Karnataka High Court Act, 1961 specifies the quorum where no specific provision is made in the special statutes. 88.1 Section 5 of the Karnataka High Court Act, 1961 provides that all First Appeals, Criminal Appeals and all cases referred to the High Court for confirmation of a sentence of death, shall be heard by a Bench consisting of not less than two Judges of the High Court. Section 10 lists the matters where the quorum required is two, that is, the matters where the powers of the High Court can be exercised by a Bench of two Judges. 88.2 Section 6 of the said Act provides that all second appeals shall be heard and disposed of by a Single Judge of the High Court. Section 8 provides that any Judge of the High Court sitting alone, shall have power to hear and dispose of civil and criminal revision cases in exercise of the revisional jurisdiction vested in the High Court. Section 9 lists the matters where the quorum required is one, that is, the matters where the powers of the High Court can be exercised by a Single Judge. Relevant portion of Section 9 is extracted below: "9. Other power of a Single Judge.–The power of the High Court in relation to the following matters shall be exercisable by a Single Judge, provided that the Judge before whom the matter is posted

for hearing may adjourn it for being heard and determined by a Bench of two Judges. (i) to (xi) omitted as not relevant. (xii) Exercise of power under (a) clause (1) of Article 226 of the Constitution of India except where such power relates to the issue of a writ in the nature of habeas corpus; and (b) Articles 227 and 228 of the Constitution of India. (xiii) omitted as not relevant". Section 9 prescribes the minimum and not the maximum number of Judges who will have to hear a case. 89. It would be seen from the provisions extracted above (Section 18 of Mysore High Court Act, 1884 and Rule 6 of Chapter III of the High Court of Karnataka Rules, 1959), that insofar as constitution of Benches and distribution of work among Judges, the power is expressly conferred upon the Chief Justice without any specific further regulation. As a consequence, the power of the Hon'ble Chief Justice to constitute Benches and distribute work is absolute and thus it is treated as his prerogative. On the other hand, as far as fixing the quorum for the several typos or categories of cases, the matter is not left to the discretion of the Chief Justice, but is fixed either by the special or general statute (H.C. Act). Where the quorum has been fixed either by the special Statutes or general Statute, the Chief Justice has no discretion to allocate a case to a Bench with lesser number of Judges than the prescribed quorum. While it is the prerogative of the Hon'ble Chief Justice to constitute the Benches and allocate work, the prerogative does not extend to fixing the quorum where it has already been fixed under the statutes. 90. The principles of quorum is well-known. It clearly refers to the minimum number of members who must be present in a deliberative body before the business may be transacted. The idea of a quorum is that when that required number of persons go into a session as a body, the votes of a majority thereof are sufficient for a binding decision. If a deliberative body has 12 members and the quorum for transacting the business is four, it does not mean that decisions cannot be taken when five or seven members are present or that a decision can be taken only if there are four members, when the quorum is fixed at four, it means that if the attendance is four or more, business can be transacted, but if the members present are less than four, business cannot be transacted. Similarly, when the quorum for a specified category of judicial work is specified by any special statute or by the H.C. Act, the Chief Justice cannot allocate that specified category of work to a Bench which consists less than the number of Judges fixed as quorum for such category of work. On the other hand, the Chief Justice, in view of his absolute power of constituting the Benches, can allocate the judicial work to a Bench consisting of more than the minimum prescribed quorum. 91. For example, if the Income-tax Act, 1961 provides that an appeal or reference shall be decided by a Bench of not less than two Judges, the Chief Justice, has the discretion of placing the matter to a Bench consisting of two or more Judges, but does not have the discretion or power to refer such appeal or reference under the Income-tax Act to a Single Judge. It is also not permissible for the Chief Justice to place a case relating to confirmation of a sentence of death before a Single Judge, but nothing prevents the Chief Justice from constituting a Bench of three Judges to hear a reference relating to confirmation of a sentence of death. Similarly, the Chief Justice has the discretion to place or allocate any case or any category

of cases which can be heard by a Single Judge, before a larger Bench, that is, a Division Bench or Full Bench. 92. Sections 6, 8 and 9 of the H.C. Act are enabling provisions which set out the category of cases which can be dealt with a minimum quorum of one (Single Judge) and Sections 5 and 10 of the H.C. Act are the enabling provisions which set out the category of cases which can be dealt with a minimum quorum of two (Division Benches). It is no doubt true that the words 'not less than', does not precede the words 'Single Judge' in Sections 6, 8 and 9, which refer to cases which can be dealt by Single Judge, though the said words 'not less than' precedes the words 'two Judges' in Section 5 of the H.C. Act and Sections 259 and 260-B of the Income-tax Act. The reason is obvious. The words 'not less than' if used before the words 'Single Judge' will be meaningless, as there is nothing less than one. But Section 9 does not prohibit allocation of matters which can be tried by a Single Judge, to a Division Bench. This aspect is no longer res integra. 93. The Supreme Court in Rathinam v State by D.S.P., District Crime Branch, Madurai, where the Supreme Court has held as follows: "Every matter to be decided by a High Court is normally decided by a two Judges Bench of the High Court. For achieving expediency in disposal of cases, statutes have provided that certain categories of cases can be heard and disposed of by Single Judges of the High Court. But it must be pointed out that all matters which can be heard and decided by a Single Judge can as well be heard and decided by a Division Bench but not vice versa, subject to statutory restrictions passed by the legislature. It is the prerogative of the Chief Justice of a High Court to allot cases to different Judges of the High Court for disposal, subject to such statutory provisions". (emphasis supplied) In Niranjan Singh v State of Rajasthan, a Full Bench of Rajasthan High Court observed thus: "The Chief Justice has therefore the power,"from time to time" to direct that any particular case or class of cases may be heard by a Bench of two or more Judges even though it may, ordinarily fall to be heard by a Single Judge". Therefore, the Chief Justice has the discretion to refer matters which can be tried by a Single Judge to a bench of two Judges though he does not have the power to do vice versa. Therefore, the Notification dated 8-7-1997 allocating all PIL to Division Bench is in valid exercise of the power of the Chief Justice. Consequently, the 56 interim orders passed by the learned Judge, in public interest, are without jurisdiction. 94. Any decision in PIL affects a large number of public. Many a time, the proceedings are initiated merely by a letter or they may even be on the basis of newspaper report; or the parties who approach the Court with a PIL may not have the financial capacity to fight the case before two Courts, once before a Single Judge and again before an Appellate Bench; mostly they are intended to help the needy and downtrodden. In the circumstances, having regard to the importance of PIL and having regard to the financial inability of the beneficiaries of PIL to approach a hierarchy of Courts, if the Chief Justice thought fit to refer the entire class of PIL cases to the Division Bench for decision, exercise of such power is reasonable and within his discretion and prerogative. The same is not therefore open to challenge. 95. In the view we have taken, it is necessary to consider in detail, the contention of the learned Advocate General that PIL should be treated as a separate category of

cases different from the additional writ petitions. There can be no doubt that they are a separate class of cases. But they are still writ petitions and not appeals or reference. So long as they continue to be writ petitions, even if they fall with a separate category, they will be governed by Section 9(xii). PIL have to be heard by a Division Bench, not because Section 9(xii) is inapplicable, but because, the Chief Justice has the power to place any case or any class of cases which can be heard by a Single Judge, before a larger Bench (including a Division Bench). 96. The above discussions lead to following conclusions: (i) The Chief Justice's discretion in determining the roster, that is, constitution of Benches and allocation of judicial work is absolute. (ii) But in regard to fixing the quorum for hearing the different category of cases, the Chief Justice should follow the statutory provisions or rules. The power of Chief Justice in regard to constitution of Benches and allocation of judicial work has nothing to do with fixing of quorum for hearing of cases, under Section 9(xii) of the H.C. Act. (iii) However, he has the discretion to refer any matter in regard to which a quorum has been fixed, to a larger Bench. Therefore, the Notification dated 8-7-1997 allocating Single Judge matter to Division Bench is valid. (iv) Neither the Single Judge nor a Division Bench has any power to entertain or decide any matter, which is not allocated by the Chief Justice to such Single Judge or Division Bench. (v) A Single Judge does not have the power to entertain any writ petition unless the said subject (and any sub-classification thereof) is allocated to him by the Chief Justice under the Roster. Section 9(xii)(a) of the H.C. Act does not enable a Single Judge to do so. 97. In the light of our answers to various points, we pass the following orders in these cases: (a) W.P. Nos. 26353 and 26354 of 1997 are dismissed. (b) All the 56 Interim Orders passed between 22-9-1997 and 30-7-1999 in W.P. Nos. 26353 and 26354 of 1997 are set aside, as having been passed without jurisdiction. Even otherwise, it is declared that the said orders come to an end, on the dismissal of W.P. Nos. 26353 and 26354 of 1997. (c) Any action already taken by the State Government or any authority, in pursuance of any of the said 56 Interim Orders shall not however be disturbed. Liberty is also reserved to the State Government and the other respondents in W.P. Nos. 26353 and 26354 of 1997 to complete any action/project already initiated and in progress, in pursuance of any of the said Interim Orders, if they want to do so. (d) W.A. Nos. 3895 and 4737, 5508 and 5509, 7432 and 7714 and 8218 and 8219 of 1999 have become virtually infructuous on account of all the Interim Order including the orders challenged in these appeals being set aside as per para (b) above. But, as these appeals challenge specific orders, they are allowed and the orders challenged are set aside. - (e) W.A. Nos. 6479 and 6480 of 1999 and 2 and 3 of 2000 are also allowed in part, reading down the references dated 20-8-1999 and 28-8-1999 as suo motu independent references and not references made in W.P. Nos. 26353 and 26354 of 1997. (f) The references dated 20-8-1999 and 28-8-1999 are answered as follows: (i) The Notification dated 8-7-1997 is declared as valid. (ii) The decisions in A.V. Amarnathan's case, supra and Narasimhasetty's case, supra, are good law, subject to the clarifications above. (g) W.P. No. 28799 of 1999 is dismissed as not maintainable. (h) C.C.C. No. 13 of 1999 is dismissed as having no merit.

(i) All parties to bear their respective costs. ORDER Bhaskar Rao, C.J., Ashok Bhan, R.V. Raveendran, A.M. Farooq and Chandrashekaraiah, JJ. Dated 14-3-2000 W.A. Nos. 5508 and 5509 of 1999 Order on objections to Constitution of Full Bench 1. We started hearing these matters on 4-2-2000. When the matters came up for further hearing on 7-2-2000, the learned Counsel for first respondent in W.A. Nos. 5508 and 5509 of 1999 filed a Memo dated 3-2-2000 in Court, objecting to the Hon'ble Chief Justice and Ashok Bhan, J., being Members of this Full Bench. Three grounds are urged by way of objections to the constitution of the Bench. They are: (i) The Full Bench will have to decide the correctness of the decision of the Division Bench in Amarnathan's case, supra, rendered by the Hon'ble Chief Justice and N.S. Veerabhadraiah, J. While presiding over this Full Bench, the Hon'ble Chief Justice will virtually sitting in judgment over his own judgment. (ii) The Hon'ble Chief Justice has been following and implementing the provisions of the Notification dated 8-7-1997 issued by the previous Chief Justice and that would amount to sitting in judgment over one's own action. (iii) Ashok Bhan, J., has passed several orders upholding the validity of the said Notification and therefore he should also not be a party to the Full Bench. 2. None of the three contentions has any merit. We will deal with each of them briefly. 3. The order of the Division Bench in Amarnathan's case, supra, is not under challenge in any of the appeals or writ petitions before us. Merely because the learned Single Judge while making a reference has doubted the correctness of the said decision, it does not follow that this Full Bench constituted to hear all these cases is sitting in Appeal over the decision in Amarnathan's case, supra. It is not infrequent when Judges of the High Court while hearing review petitions in respect of their own orders, have modified, altered, withdrawn or recalled their earlier orders. Similarly, several Judges while sitting in larger Benches have examined the correctness of their own judgments rendered while sitting singly or in Division Benches and have over-ruled or modified their earlier views. A Judge keeps an open mind. A Judge who has rendered a particular decision is not barred from being a Member of a larger Bench, where a question similar to the one decided by him arises for consideration, nor is there any impropriety in a Judge being a Member of a larger Bench before which one of his judgments or orders may come up for consideration. 4. The second ground is too feeble to be dealt at length. A Notification issued by the Chief Justice in regard to allocation of work is followed not only by the Chief Justice, but all the Judges of the Court. In fact all the Judges of this Court will continue to abide by the said Notification, until it is withdrawn or otherwise ceases to operate. 5. The third objection is vague. It is not disclosed in which judgment or order Ashok Bhan, J., has upheld the validity of the Notification dated 8-7-1997. In fact, the petitioner has not disclosed as to whether the validity of the said Notification has ever been challenged other than in Amarnathan's case, supra. Following or giving effect to a Notification is not the same as judicially upholding the validity of a Notification. Considering the validity of a Notification arises only when it is specifically challenged. Ashok Bhan, J., has not considered the validity of the said Notification in any matter. Even if he has considered validity of the said

order either directly or indirectly in any case, there is no bar for his being a Member of this Bench, for the reasons stated in para 3 above. 6. Hence, the objections to the constitution of this Full Bench with the Hon'ble Chief Justice and Ashok Bhan, J., being two of five Members, is rejected.