

## Mayawati vs Union Of India & Ors on 6 July, 2012

Equivalent citations: AIR 2012 SUPREME COURT 3765, 2012 AIR SCW 4110, AIR 2012 SC (CRIMINAL) 1428, 2012 CRILR(SC MAH GUJ) 675, (2012) 3 CHANDCRIC 332, (2012) 95 ALL LR 57, (2012) 116 ALLINDCAS 111 (SC), 2012 CRILR(SC&MP) 675, 2012 (116) ALLINDCAS 111, 2012 (6) SCALE 239, 2012 (3) SCC(CRI) 801, 2012 (8) SCC 106, (2012) 3 CURCRIR 118, (2012) 3 ALLCRIR 2697, (2012) 2 UC 1495, (2012) 78 ALLCRIC 730, (2012) 2 KANT LJ 174, (2012) 1 KCCR 153, (2012) 52 OCR 799, (2012) 3 RECCRIR 622, (2012) 6 SCALE 239, (2012) 3 DLT(CRL) 82

**Author: P.Sathasivam**

**Bench: P. Sathasivam, Dipak Misra**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

1 WRIT PETITION (CRIMINAL) NO. 135 OF 2008

Ms. Mayawati

.... Petitioner (s)

Versus

Union of India & Ors.

.... Respondent(s)

2

J U D G M E N T

P.Sathasivam,J.

1) The only question raised in this writ petition, filed under Article 32 of the Constitution of India, is

as to whether FIR No. R.C. 0062003A0019 dated 05.10.2003 lodged under Section 13(2) read with Section 13 (1) (e) of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the PC Act”) against the petitioner herein to investigate into the matter of alleged disproportionate assets is beyond the scope of the directions passed by this Court in the order dated 18.09.2003 in I.A. No. 376 of 2003 in W.P. (C) No. 13381 of 1984 titled M.C. Mehta vs. Union of India and Others, (2003) 8 SCC 696?

2) The case of the petitioner as stated in the writ petition, is summarized hereunder:

(a) On the date of filing of this writ petition before this Court, the petitioner was the Chief Minister of U.P. Earlier also, the petitioner had been the Chief Minister of U.P. for three times. The petitioner had also served as a Member of Parliament many a time both as a Member of Lok Sabha and Rajya Sabha and had also served as a Member of Legislative Assembly and Legislative Council of the State of U.P. The petitioner is a law graduate and had been a teacher from 1977 to 1984. At present, the petitioner is the President of a National Political Party called as “Bahujan Samaj Party (BSP)”, which is one of the six National Parties recognized by the Election Commission of India.

(b) This Court, by order dated 16.07.2003 in I.A. No. 387 of 2003 in Writ Petition (C) No. 13381 of 1984 titled M.C. Mehta vs. Union of India & Ors.

directed the CBI to conduct an inquiry on the basis of an I.A. filed in the aforesaid writ petition alleging various irregularities committed by the officers/persons in the Taj Heritage Corridor Project and to submit a Preliminary Report.

(c) By means of an order dated 21.08.2003, this Court issued certain directions to the CBI to interrogate and verify the assets of the persons concerned with regard to outflow of Rs. 17 crores which was alleged to have been released without proper sanction for the said Project. When the case was taken up for hearing on 11.09.2003, a report was submitted by the CBI and it was directed to be kept in a sealed cover in the Registry.

(d) This Court, in its further order dated 18.09.2003, on the basis of the report dated 11.09.2003, granted further time to the CBI for verification of the assets of the officers/persons involved. The CBI- Respondent No. 2 herein submitted a report on 18.09.2003 before this Court which formed the basis of order dated 18.09.2003 wherein the CBI was directed to conduct an inquiry with respect to the execution of the Taj Heritage Corridor Project under Taj Trapezium Zone (TTZ) Area at Agra.

(e) Pursuant to the orders of this Court, an FIR was lodged on 05.10.2003 being RC No. 0062003A0018/2003 under Section 120-B read with Sections 420, 467, 468 and 471 IPC and under Section 13(2) read with Section 13(1)(d) of the PC Act against several persons including the petitioner herein. In the said FIR, certain details and several developments which took place with regard to the aforesaid Project have been given. As per the allegations contained in the report dated 11.09.2003, several irregularities were allegedly being found in the aforesaid Project. Pursuant to

the same, investigation has been completed and the report was forwarded to obtain the sanction from the competent authority, namely, the Governor for prosecuting the Chief Minister of the State. The Governor, by order dated 03.06.2007, declined to accord sanction to prosecute the petitioner.

(f) According to the petitioner, in the aforesaid FIR, it was stated that this Court also directed the CBI to conduct an inquiry pertaining to the assets of the officers/individuals concerned in the aforesaid Project as mentioned in the judgment passed by this Court in the aforesaid case in order to ascertain whether any mis-appropriation of funds have been done with regard to outflow of Rs. 17 crores released for the construction of said Project. A perusal of the order dated 18.09.2003 would reveal that whatever directions were issued by this Court were only in respect of Rs. 17 crores alleged to have been released without proper sanction and there is not even a whisper about making an investigation into any other assets of the persons involved in general. In other words, the scope of the order of this Court was limited to the extent of money released in the said Project and not otherwise. This is clear from the order of this Court dated 18.09.2003 wherein it had specifically observed about lodging of FIR only with regard to Taj Heritage Corridor Project case. That order nowhere mentioned about lodging of second FIR in regard to the disproportionate assets of the petitioner.

(g) It is the further case of the petitioner that contrary to the orders of this Court, with mala fide intentions, the CBI registered another FIR being R.C. No. 19 of 2003 on the same date i.e. 05.10.2003 only against the petitioner alleging therein that in pursuance of the orders dated 21.08.2003, 11.09.2003 and 18.09.2003 passed by this Court, they conducted an inquiry with regard to the acquiring of disproportionate movable and immovable assets by the petitioner and her close relatives and on the basis of this inquiry lodged the said FIR, whereas there was no direction or observation by this Court to inquire into the assets of the petitioner not related to the said Project case.

(h) The said FIR has been lodged by Shri K.N. Tewari, Superintendent of Police, CBI/ACP, Lucknow, however, in the column of complaint at page No. 2 of the FIR, the name of the complainant/informant has been mentioned as Shri Inder Pal, Assistant Registrar, PIL Branch, Supreme Court of India, New Delhi even though no such order or direction issued by him for registration of the case. It is further pointed out that Shri Inder Pal has not signed any such FIR as complainant/informant. Pursuant to the impugned FIR - R.C. No. 19 of 2003 the CBI conducted raids, search and seizure operations at all the premises of the petitioner and her relatives and seized all the bank accounts.

(i) The petitioner has made several representations to the CBI officials, the State Minister of Personnel and the Hon'ble Prime Minister who heads the Personnel Department drawing their attention that the Supreme Court had not given any such direction or authority to the CBI to lodge an FIR in respect to the alleged disproportionate assets and investigate the entire assets of the petitioner from the year 1995 which have no relation with the case of Taj Heritage Corridor Project which came into being only in August, 2003. In spite of several reminders and further representations, till date no communication has been received from the CBI. The absence of any reply by any of the authorities including the CBI shows that there was no direction or authority to

the CBI in the order dated 18.09.2003 to lodge an FIR or to investigate into the assets of the petitioner which are not related to the said Project. Hence, it was incumbent upon the CBI to comply with the provisions of Section 6 of the Delhi Special Police Establishment Act, 1946 (in short 'DSPE Act') which makes it obligatory to obtain the consent of the Government of the concerned State to confer jurisdiction on the CBI to investigate in any case arising within the jurisdiction of a State. In the present case, FIR was lodged and investigation was conducted without obtaining consent of the State Government which is in flagrant violation of Section 6 of the DSPE Act. In the absence of the consent of the State Government, the whole exercise of the CBI about lodging of FIR and investigating into the assets of the petitioner not related to Taj Heritage Corridor Project is without jurisdiction and, therefore, the same is non est and void ab initio.

(j) It is further pointed out that this Court in its order dated 25.10.2004, after perusing the investigation reports filed by the CBI, held that no link was found between the irregularities alleged to have been found in respect to the assets matter and the Taj Heritage Corridor Project which was the subject-matter of the reference before the Special Bench.

(k) The fact that this Court had stopped monitoring the assets case was again reiterated in the order dated 07.08.2006 passed by this Court.

(l) On 27.11.2006, this Court finally decided the issue in respect to the FIR being R.C. No. 18 relating to the Taj Heritage Corridor matter reported in M.C. Mehta (Taj Corridor Scam) vs. Union of India & Ors., (2007) 1 SCC

110. In the said judgment, this Court observed that it should not embark upon an enquiry in regard to the allegations of criminal misconduct in order to form an opinion one way or the other so as to prima facie determine guilt of a person or otherwise. When the matter came up before the Governor of U.P. to grant or refuse sanction for prosecution, he sought legal opinion from the Additional Solicitor General of India and based on his opinion and on appreciation of entire materials, the Governor has concluded that the petitioner was not even remotely connected with the sanction of the said Project or the payment released for the same. After the above order of the Governor, the directions given by this Court in the order dated 18.09.2003 were fully complied with including in respect to consider violations of the provisions of the PC Act. After this, there was no justification or authority with the CBI to continue with the investigation in other personal assets of the petitioner.

(m) On 05.06.2007, the CBI moved an application before the Special Judge, Anti Corruption Bureau, (CBI), Lucknow informing that the Governor had refused to grant sanction. On perusal of all the materials including the order of the Governor declining to grant sanction, the Special Judge held that in the absence of sanction to prosecute the petitioner, the Court has no jurisdiction to take cognizance.

(n) The order of the Governor was also challenged before this Court in Writ Petition (Civil) No. 434 of 2007. However, this Court, by order dated 06.08.2007, dismissed the same as withdrawn. Even thereafter, the petitioner has made several representations to the Director, CBI to drop the investigation on the basis of the aforesaid FIR. However, the CBI is bent upon harassing the

petitioner. Hence, she approached this Court by filing the present writ petition.

**Stand of the CBI-Respondent No.2:**

3) Pursuant to the notice issued on 15.05.2008, the CBI-Respondent No.2 herein has filed its counter affidavit wherein it was stated that in the order dated 18.09.2003 of this Court, there was a clear direction to register an FIR for investigating into disproportionate assets of the petitioner on the ground that in the said order it was mentioned that “apart from what has been stated in the reports with regard to the assets, the learned ASG Mr. Altaf Ahmad has submitted that further inquiry/investigation is necessary by the CBI”. It is further stated that the validity of the aforesaid FIRs was not disturbed by the Allahabad High Court by its order dated 22.10.2003 on the ground that the FIR in question was filed as per the directions of this Court. It is further stated by the CBI that the FIR No. RC 19 dated 05.10.2003 under Section 13(2) read with Section 13(1)(e) of the PC Act reveal the details of huge amount of disproportionate assets possessed by the petitioner and her family members beyond their known sources of income.

**Further case of the petitioner:**

4) A rejoinder affidavit, supplementary affidavit and supplementary counter affidavits have also been filed wherein subsequent developments which took place during the pendency of the writ petition, especially, passing of various orders by the Income Tax Authorities, Income Tax Appellate Tribunal and the Delhi High Court in favour of the petitioner for different assessment years have been mentioned holding that all income shown in her accounts in the form of gift or otherwise are genuine and legal, covering from 1995 to 2004 of which period the assessments were reopened, investigated and reassessed.

**Case of the intervenor:**

5) During the pendency of this writ petition, which was filed in 2008, one Mr. Kamlesh Verma has filed I.A. No. 8 of 2010 claiming that he is a social worker and petitioner in Writ Petition No. 2019 of 2009 (M/B) concerning FIR being RC No. 18 dated 05.10.2003 for intervention in the above matter and to assist the Court. By pointing out that it was he who challenged the order of the Governor declining to grant sanction in respect of FIR No. 18 and filed Writ Petition No. 2019 of 2009 which is pending in the Allahabad High Court, Lucknow Bench, sought to intervene to put-forth certain factual details. In the said application, the intervenor has also highlighted various earlier orders of this Court. The said I.A. was resisted by the petitioner by pointing out that in the present writ petition the petitioner seeks quashing of the second FIR i.e. R.C. No. 19 only on the ground that there was no such direction in the order dated 18.09.2003 passed by this Court. The intervention application is therefore, misconceived. It is also pointed out that the intervenor has

filed his writ petition in Lucknow in 2009 and his intervention application was filed on 08.09.2010 whereas the petitioner had filed writ petition in May, 2008 and this Court had issued notice on 15.05.2008. It is also pointed out that the intervener was not associated with the Project matter before this Court at any stage when orders were passed on several dates commencing from 2003 ending with 2009.

6) In the light of the above pleadings of the parties, we heard Mr. Harish Salve, learned senior counsel for the petitioner, Mr. Mohan Parasaran, learned Additional Solicitor General for the Union of India and CBI and Ms. Kamini Jaiswal, learned counsel for the intervener.

7) The relief(s) sought for in the writ petition are reproduced hereunder:-

“I. Issue a Writ, Order or direction in the nature of certiorari quashing the FIR No. R.C. 0062003A0019/2003 dated 05.10.2003 lodged by Superintendent of Police, CBI/ACB, Lucknow and investigation proceedings being made in pursuance thereof.

II. Issue a Writ, Order or direction in the nature of Mandamus restraining the respondent no.2 and 3 from proceeding further in pursuance to the said FIR and direct them to close and drop the said proceedings;

III. Issue a writ, order or direction in the nature of mandamus directing the release of all seized bank accounts of the petitioner which have been seized by CBI in pursuance to the impugned FIR.

IV. Issue an appropriate writ, order or direction declaring that this Hon'ble court under Article 32/136/142 of the Constitution of India or the High Court under Article 226 of the Constitution of India can not direct the Central Bureau of Investigation (CBI), an establishment created under the Delhi Special Police Establishment Act, 1946 to investigate a cognizable offence which is alleged to have taken place in a State without the consent of the State Government under Section 6 of the Delhi Special Police Establishment Act, 1946.

V. Issue any other Writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the present case.”

8) It is clear from the narration of facts as well as the relief(s) sought for in the writ petition that the petitioner is aggrieved of second FIR being No. R.C. 0062003A0019 dated 05.10.2003. It is also clear that the petitioner has assailed the said FIR on the ground that there was no direction by this Court in its order dated 18.09.2003 which could have empowered the CBI to lodge two FIRs, namely, (i) FIR No. R.C. 0062003A0018 dated 05.10.2003 under Section 120-B read with Sections 420, 467, 468, and 471 IPC and Section 13(2) read with Section 13(1)(d) of the P.C. Act against the petitioner as well as 10 other accused persons in respect of Taj Corridor matter and (ii) FIR No. R.C. 0062003A0019 dated 05.10.2003 under Section 13(2) read

with Section 13(1)(e) of the P.C. Act against the petitioner only. It is the specific stand of the CBI that in the order dated 18.09.2003 passed by this Court in I.A. No. 376 of 2003 in Writ Petition No. 13381 of 1984 - M.C. Mehta vs. Union of India and Others, (2003) 8 SCC 696, there was a clear direction to register an FIR for investigating into disproportionate assets of the petitioner on the ground that in the said order, it is mentioned that “apart from what has been stated in the reports with regard to the assets, the learned ASG Mr. Altaf Ahmed has submitted that further inquiry/investigation is necessary by the CBI”. It is also their stand that the validity of the aforesaid FIRs was not disturbed by the Allahabad High Court by its order dated 22.10.2003 on the ground that the FIR in question was filed as per the directions of this Court. It is further stated that the second FIR being No. R.C. 0062003A0019 dated 05.10.2003 revealed the details of huge amount of disproportionate assets possessed by the petitioner and her family members beyond their known sources of income.

9) As against the abovesaid stand of the CBI, the petitioner, in the form of rejoinder and supplementary affidavits, has pointed out that all income shown in her accounts in the form of gift or otherwise are genuine and legal covering from 1995 to 2004. It is further pointed out that all orders passed by the Income Tax Authorities have been brought on record and all of them attained finality and no further appeal is pending against them and all the assessments were reopened investigated and re-assessed.

10) The petitioner has also filed a consolidated compilation of orders passed by this Court commencing from 16.07.2003 ending with 27.04.2009. Mr. Harish Salve, learned senior counsel for the petitioner and Mr. Mohan Parasaran, learned ASG took us through all those orders. Among those orders, we are very much concerned about the order dated 18.09.2003. Before going into the various directions issued in the said order, it is also relevant to refer the earlier orders dated 16.07.2003, 21.08.2003 and 11.09.2003. It is clear from those orders that this Court by order dated 30.12.1996 in M.C. Mehta (Taj Trapezium Matter) vs. Union of India and Others, (1997) 2 SCC 353 issued a number of directions to protect the national and world heritage monument, namely, the Taj. Thereafter, a number of interim applications were filed by the persons concerned who were required to shift their business or manufacturing activities. This Court has also appointed a Monitoring Committee to report whether those directions issued by this Court are complied with or not.

11) In the order dated 16.07.2003 – M.C. Mehta vs. Union of India and Others, (2003) 8 SCC 706, this Court, in order to find out who cleared the project, i.e., construction of the ‘Heritage Corridor’ at Agra and for what purpose it was cleared without obtaining necessary sanction from the Department concerned and whether there was any illegality or irregularity committed by the officers/persons, came to the conclusion that inquiry by CBI is necessary. Accordingly, in para 16 of the said order, this Court directed the Director of CBI to see that inquiry with regard to any illegality/irregularity committed by the officers/persons be conducted at the earliest and directed to submit a report to this Court. This Court also directed the CBI to submit Preliminary report within four weeks and final report within two months from 16.07.2003.

12) In the next order dated 21.08.2003, M.C Mehta vs. Union of India, (2003) 8 SCC 711, this Court, after going through the Preliminary Confidential Report submitted by the CBI, directed the higher officer of CBI to interrogate four, five or six more persons who are involved in the decision-making of granting contract for construction of the Taj Heritage Corridor. In the same order, this Court observed that it would be open to the CBI officer to interrogate and verify their assets because it was alleged that Rs. 17 crores were released without proper sanction.

13) The next order is dated 18.09.2003 - M.C. Mehta vs. Union of India and Others, 2003 (8) SCC 696. In this order, this Court referred to the earlier directions and orders, more particularly, the direction to CBI to interrogate the persons involved and verify their assets in view of the fact that it was alleged that an amount of Rs. 17 crores was released without proper sanction. After going through the report of the CBI submitted on 11.09.2003, further time was given to the CBI for verification of the assets of the persons/officers involved. In the course of hearing, the CBI has pointed out that income tax returns of various persons including the petitioner were collected from different income tax authorities. In the course of the said proceedings, apart from various reports with regard to the assets, the learned ASG - Mr. Altaf Ahmed submitted that further inquiry/investigation is necessary by the CBI. Based on his request, this Court issued the following directions:

“13. Considering the aforesaid report and the serious irregularities/illegalities committed in carrying out the so-called Taj Heritage Corridor Project, we direct:

(a) the Central Government to hold immediate departmental inquiry against Shri K.C. Mishra, former Secretary, Environment, Union of India;

(b) the State of Uttar Pradesh to hold departmental inquiry against Shri R.K. Sharma, former Principal Environment Secretary, Shri P.L. Punia, former Principal Secretary to Chief Minister, Shri D.S. Bagga, Chief Secretary and Shri V.K. Gupta, former Secretary, Environment;

(c) NPCC or the competent authority including the Central Government to hold inquiry against Shri S.C. Bali, Managing Director of NPCC;

(d) the State Government as well as the officers concerned of the Central Government are directed to see that departmental inquiry is completed within four months from today. The State of U.P. and the Central Government would appoint respective inquiry officers for holding inquiry, within a period of seven days from today;

(e) it would be open to the State Government if called for to pass order for suspension of the delinquent officers in accordance with the rules;

(f) for the officers and the persons involved in the matter, CBI is directed to lodge an FIR and make further investigation in accordance with law;



(g) CBI shall take appropriate steps for holding investigation against the Chief Minister Ms Mayawati and Naseemuddin Siddiqui, former Minister for Environment, U.P. and other officers involved;

(h) the Income Tax Department is also directed to cooperate in further investigation which is required to be carried out by CBI;

(i) CBI would take into consideration all the relevant Acts i.e. IPC/Prevention of Corruption Act and the Water (Prevention and Control of Pollution) Act, 1974 etc.;

(j) CBI to submit a self-contained note to the Chief Secretary to the Government of Uttar Pradesh as well as to the Cabinet Secretary, Union Government and to the Ministry concerned dealing with NPCC.”

14) A perusal of the orders prior to the order dated 18.09.2003 and several directions in the order dated 18.09.2003 clearly show that this Court was concerned with illegality/irregularity committed by the officers/persons in carrying out the Taj Heritage Corridor Project. The main allegation relates to an amount of Rs. 17 crores which was released by the State Government without proper sanction. It is also clear that in order to find out who cleared the project and for what purpose it was cleared without obtaining necessary sanction from the Department concerned and whether there was any illegality/irregularity committed by the officers/persons, this Court thought an inquiry by CBI was considered necessary. In such a situation, the CBI was directed to interrogate and verify their assets. As rightly pointed out by Mr. Harish Salve, there was no occasion for this Court to consider the alleged disproportionate assets of the petitioner separately that too from 1995 to 2003 when admittedly Rs. 17 crores were released in September, 2002.

15) A thorough scrutiny of all the orders including the specific directions dated 18.09.2003 clearly show that the same was confined only in respect to the case relating to Taj Corridor Project which was the subject- matter of reference before the Special Bench. It is relevant to point out para 13(f) of the order dated 18.09.2003 which makes it clear that the CBI could have lodged only one FIR No. R.C. 0062003A0018 dated 05.10.2003. In other words, inasmuch as there being no consideration of alleged disproportionate assets at any stage of the proceedings while dealing with the Taj Corridor matter, there could not have been and in fact there was no such direction to lodge another FIR being No. R.C. 0062003A0019 dated 05.10.2003 exclusively against the petitioner under the P.C. Act.

16) In this regard, learned senior counsel for the petitioner pressed into service a Constitution Bench decision rendered in the case of State of West Bengal & Ors. vs. Committee for Protection of Democratic Rights, West Bengal & Ors., (2010) 3 SCC 571. After considering various constitutional provisions relating to the State and the Union as well as Section 6 of the DSPE Act, the Bench has concluded thus:

“69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.

Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

71. In *Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya* this Court had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a *prima facie* case calling for an investigation by CBI or any other similar agency. We respectfully concur with these observations.”

17) As rightly pointed out that in the absence of any direction by this Court to lodge an FIR into the matter of alleged disproportionate assets against the petitioner, the Investigating Officer could not take resort to Section 157 of the Code of Criminal Procedure, 1973 (in short ‘the Code’) wherein the Officer-in-charge of a Police Station is empowered under Section 156 of the Code to investigate on information received or otherwise. Section 6 of the DSPE Act prohibits the CBI from exercising its powers and jurisdiction without the consent of the Government of the State. It is pointed out on the side of the petitioner that, in the present case, no such consent was obtained by the CBI and submitted that the second FIR against the petitioner is contrary to Section 157 of the Code and Section 6 of the DSPE Act. It is not in dispute that the consent was declined by the Governor of the

State and in such circumstance also the second FIR No. R.C. 0062003A0019 dated 05.10.2003 is not sustainable.

18) Mr. Mohan Parasaran, learned ASG as well as Ms. Kamini Jaiswal, learned counsel for the intervener after taking us through the order dated 18.09.2003 and other orders submitted that the CBI was well within its power to pursue the second FIR No. R.C. 0062003A0019 dated 05.10.2003. Among various directions, Mr. Mohan Parasaran, learned ASG very much pressed into service the direction in para 13(g) of the order dated 18.09.2003. The said direction reads as under:-

“(g) CBI shall take appropriate steps for holding investigation against the Chief Minister Ms Mayawati and Naseemuddin Siddiqui, former Minister for Environment, U.P. and other officers involved;” According to Mr. Mohan Parasaran, liberty was granted by this Court to proceed against the petitioner. He also relied on para 9 of the order dated 25.10.2004 – M.C. Mehta vs. Union of India and Others, (2007) 1 SCC 137, which reads as under:-

“Re: FIR RC 0062003A0019

9. The further investigation report filed by CBI in this connection while indicating large-scale irregularities does not in fact show any link between such irregularities and the Taj Corridor matter which is the subject-matter of reference before the Special Bench. CBI therefore is at liberty to proceed with and take action on the basis of their investigation in respect of this FIR. In the event any link is disclosed in the course of such investigation between facts as found and the Taj Corridor Project, CBI will bring the same to the notice of this Court. In any event, CBI will be entitled to take action on the basis of the investigation as it may think fit.” In addition to the above, he also pressed into service para 4 of the order dated 19.07.2004 – M.C. Mehta vs. Union of India and Others, (2007) 1 SCC

136. The said order reads as under: -

“4. CBI is permitted further eight weeks’ time to complete the investigation in respect of FIR No. RC 0062003A0018. As far as FIR No. RC 0062003A0019 is concerned, three months’ time is granted.” In view of the argument of Mr. Mohan Parasaran as well as Ms. Kamini Jaiswal relying on the above directions, we have gone through all those orders meticulously. According to us, the entire issue revolves around the order dated 18.09.2003 passed by this Court as the FIR was filed immediately thereafter on 05.10.2003. The said FIR as well as the counter affidavit filed by the CBI states that the FIR has been filed as per the directions contained in the order dated 18.09.2003. A perusal of the same shows that the Assistant Registrar of this Court has been described as the Complainant. On going through all the orders, we are of the view that the said objection of the petitioner cannot be rejected. A perusal of the series of orders passed in W.P. No. 13381 of 1984 - M.C. Mehta vs. Union of India and Others clearly show that the order dated 18.09.2003 is preceded by other orders issued from

time to time only in connection with Taj Heritage Corridor Project. While considering the directions issued in the order dated 18.09.2003, it is incumbent to refer the orders dated 16.07.2003, 21.08.2003 and 11.09.2003. We have already noted that those previous three orders passed by this Court state that the CBI was directed to interrogate the persons involved and also to verify their assets because it was alleged that the amount of Rs. 17 crores was released without proper sanction. It is relevant to mention that in the order dated 25.10.2003 (which we have already quoted in the earlier paras) this Court mentioned that it was not monitoring disproportionate assets case since no link could be found between the Taj Corridor matter and the assets of the petitioner.

(para 9 of the order dated 25.10.2004) It is also relevant to refer the next order dated 07.08.2006 wherein the same was once again reiterated. It is true that in the order dated 25.10.2004, liberty was granted to the CBI that in the event any link is disclosed in the course of such investigation between the Taj Corridor Project and the assets, CBI is free to bring it to the notice of this Court. The fact remains that the investigation report filed by the CBI before this Court which was considered on 25.10.2004 shows that large-scale irregularities does not show any link between such irregularities and the Taj Corridor matter. The said finding/conclusion by this Court was based on the investigation report of the CBI. In view of the same, we are satisfied that CBI cannot be permitted to take the view that two cases, namely, Taj Corridor and Disproportionate Assets case are same and the investigation was done in both the cases as per the directions of this Court. After reading the entire orders dated 18.09.2003 and 25.10.2004, the stand of the CBI is to be rejected as unacceptable.

19) It is also brought to our notice that merely because various orders of this Court including the order dated 18.09.2003 has been communicated to various authorities in terms of the provisions of the rules of this Court, the CBI is not justified in putting the Assistant Registrar of this Court as informant/complainant. Further as rightly pointed out by Mr. Salve, the complainant/Assistant Registrar would not and cannot be a witness in the case to corroborate the statements made in the FIR No. R.C. 0062003A0019 dated 05.10.2003. As rightly pointed out, proceeding further, as if the said Assistant Registrar of this Court made a complaint cannot be sustained.

20) We have already pointed out after reading various orders of this Court which show that Taj Corridor was the subject matter of reference before the Special Bench. Various directions issued in the order dated 18.09.2003 have to be read in the light of the previous orders dated 16.07.2003, 21.08.2003 and 11.09.2003 as well as subsequent orders dated 25.10.2004 and 07.08.2006 wherein this Court has clarified that it was not monitoring the disproportionate assets case. We are satisfied that reading of all the orders of this Court clearly show the direction to lodge FIR was issued only with respect to Taj Corridor matter, more particularly, irregularities therein. In fact, the direction was confined to find out as to who cleared the project of Taj Corridor and for what purpose it was cleared and whether there was any illegality or irregularity committed by officers and other persons concerned in the State. We have already noted all those orders which clearly state that the CBI is free to interrogate and verify the assets of the officers/persons relating to release of Rs. 17 crores in connection with Taj Corridor matter.

21) As discussed above and after reading all the orders of this Court which are available in the 'compilation', we are satisfied that this Court being the ultimate custodian of the fundamental rights did not issue any direction to the CBI to conduct a roving inquiry against the assets of the petitioner commencing from 1995 to 2003 even though the Taj Heritage Corridor Project was conceived only in July, 2002 and an amount of Rs. 17 crores was released in August/September, 2002. The method adopted by the CBI is unwarranted and without jurisdiction. We are also satisfied that the CBI has proceeded without proper understanding of various orders dated 16.07.2003, 21.08.2003, 18.09.2003, 25.10.2003 and 07.08.2003 passed by this Court. We are also satisfied that there was no such direction relating to second FIR, namely, FIR No. R.C. 0062003A0019 dated 05.10.2003. We have already referred to the Constitution Bench decision of this Court in Committee for Protection of Democratic Rights, West Bengal (supra) wherein this Court observed that only when this Court after considering material on record comes to a conclusion that such material does disclose a prima facie case calling for investigation by the CBI for the alleged offence, an order directing inquiry by the CBI could be passed and that too after giving opportunity of hearing to the affected person. We are satisfied that there was no such finding or satisfaction recorded by this Court in the matter of disproportionate assets of the petitioner on the basis of the status report dated 11.09.2003 and, in fact, the petitioner was not a party before this Court in the case in question. From the perusal of those orders, we are also satisfied that there could not have been any material before this Court about the disproportionate assets case of the petitioner beyond the Taj Corridor Project case and there was no such question or issue about disproportionate assets of the petitioner. In view of the same, giving any direction to lodge FIR relating to disproportionate assets case did not arise.

22) We finally conclude that anything beyond the Taj Corridor matter was not the subject-matter of reference before the Taj Corridor Bench. Since the order dated 18.09.2003 does not contain any specific direction regarding lodging of FIR in the matter of disproportionate assets case against the petitioner, CBI is not justified in proceeding with the FIR No. R.C. 0062003A0019 dated 05.10.2003. In view of the above discussion, we are satisfied that the CBI exceeded its jurisdiction in lodging FIR No. R.C. 0062003A0019 dated 05.10.2003 in the absence of any direction from this Court in the order dated 18.09.2003 or in any subsequent orders.

23) Regarding the intervention application - I.A. No. 8 of 2010 filed by Shri Kamlesh Verma, though an objection was raised about his right to intervene in the matter, it is not in dispute that against the rejection of the sanction to proceed against the petitioner by the State, he had preferred a Writ Petition (C) No. 2019 of 2009 in the Allahabad High Court which is still pending. It is pointed out that intervener was not associated with the Taj Corridor matter before this Court at any stage when the orders dated 16.07.2003, 21.08.2003, 11.09.2003, 18.09.2003, 19.07.2004, 25.10.2004, 07.08.2006, 27.11.2006, 06.08.2007, 10.10.2007 and 27.04.2007 were passed. It is true that the intervener has no legal right to intervene in the matter of this kind where CBI has been prosecuting the case vigorously against the petitioner. Inasmuch as the intervener has challenged the order of the Governor of U.P. declining to grant sanction to prosecute the petitioner and the said matter is pending in the Lucknow Bench of the Allahabad High Court, in order to assist the Court, we heard his counsel Ms. Kamini Jaiswal. It is true that this Court has held that when investigating agency like CBI and Union of India are contesting the matter effectively, the third party was not permitted

to canvass correctness of the judgment by way of PIL (Union of India & Anr. vs. W.N. Chadha, 1993 (Supp) 4 SCC 260) and Janata Dal vs. H.S. Chowdhary & Ors., (1991) 3 SCC 756. While accepting the above principles reiterated in those decisions, in view of the peculiar facts that the intervener - Kamlesh Verma is pursuing his writ petition against the petitioner in the High Court, we heard his counsel to assist the Court. In view of the above special circumstance, we allow I.A. No. 8 of 2010 and the same cannot be cited as a precedent for other cases.

24) In the light of the above discussion, we hold that in the absence of any specific direction from this Court in the order dated 18.09.2003 or any subsequent orders, the CBI has exceeded its jurisdiction in lodging FIR No. R.C. 0062003A0019 dated 05.10.2003. The impugned FIR is without jurisdiction and any investigation pursuant thereto is illegal and liable to be quashed, accordingly quashed. The writ petition is allowed.

.....J. (P. SATHASIVAM) .....J. (DIPAK MISRA) NEW  
DELHI;

JULY 6, 2012.

-----