

Gujarat High Court

Nilkanth Tulsidas Bhatia vs Union Of India (Uoi) And 7 Ors. on 7 March, 2006

Author: M Shah

Bench: M Shah

ORDER M.R. Shah, J.

1. The present Special Civil Application is heard by this Court for admission as well as for interim relief at length for couple of days. Heard Shri Nageshwar Rao, learned senior advocate appearing with Mr. Y.F.Mehta, learned advocate appearing on behalf of the petitioner and Shri N.D.Nanavati, learned senior advocate with Ms.Megha Jani, learned advocate appearing on behalf of the respondent No. 1 and Shri J.M.Malkan, learned Assistant Solicitor General for India for Central Government and Shri Kamal B. Trivedi, learned Assistant Advocate General, Shri Sunit Shah and Shri Pranit K. Nanavati, learned advocate appearing on behalf of the respective party at length. Though served, nobody appeared on behalf of the respondent No. 6 " a High Level Committee consisting of Mr. Justice U.C.Banerjee, a retired Judge of Supreme Court of India constituted under notification issued by the Central government of India being Notification No. ERB-I/ 2004 / 23/ 29 dated 4.9.2004 published in Part-I, Section-I of the Gazette of India dated 25.9.2004.

2. Considering the contentious issues raised in the main Special Civil Application, some of the them are referred to and discussed hereinafter while considering the question of interim relief, and even the learned counsel appearing on behalf of the contesting respondents also fairly conceded before this Court that considering the various issues involved in the present Special Civil Application, they cannot be decided at the admission stage and for which, the petition deserves admission and therefore, this Court admitted the present Special Civil Application on 21.2.2006. However, due to paucity of time though the matter was fully heard qua interim relief, the order qua interim relief could not be passed by this Court on last hearing i.e. on 21.2.2006 and therefore, for pronouncement of order on interim relief, the matter was adjourned to 7.3.2006. So far Civil Application No. 12631 of 2005 in Special Civil Application No. 16500 of 2005, this Court had already passed the order on 24.1.2006 to the effect that the ad-interim relief granted earlier in main Special Civil Application as well as Civil Application No. 12631 of 2005 are directed to be continued and they are still in force.

3. Heard learned counsel appearing on behalf of the parties at length qua interim relief. Before I deal with the submissions on behalf of the respective parties, for and against granting of interim relief, the background and few facts and chronological events, since necessary and relevant, are discussed as under.

[i] In an unfortunate incident which had taken place on 27.2.2002 at 7.47 Hours the Coach No. S-6 was set on fire and as many as 58 passengers of that coach were burnt alive and more than 40 passengers sustained injuries. The petitioner is one of the victims who was traveling by the said train and was in that Coach-S-6 itself. Criminal complaints came to be filed and/or lodged being C.R.No.9 and 10 of 2002 at Godhara Railway Police Station on 27.2.2002 itself for the offence punishable under Section 307, 147, 148, 149, 436, 153-A read with Section 120-B of the IPC and Section 141, 150 and 153 of the Indian Railways Act, 1989 and Section-3 and 7 of the Damage to the Public Property

Act. It also appears from the record that later on provisions of Prevention of Terrorist Act, 2002 are also applied and the said case is transferred to the Special Court under the POTA Act and the trial for the aforesaid criminal complaints and offences is pending. It also appears from the record that on the very next date the Hon'ble Chief Minister of the State of Gujarat in the House of Legislative Assembly made a statement on 28.2.2002 to appoint a Commission under Section 3 of The Commissions of Inquiry Act, 1952 (hereinafter referred to as the Act of 1952 for short ) to inquire into the said incident and the State Government under Government Notification dated 6.3.2002 appointed the Commission of Inquiry under the Act of 1952 consisting of Mr. Justice K.G.Shah, retired Judge of the High Court of Gujarat to inquire into and report on THE INCIDENT OF SETTING ON FIRE SOME COACHES OF SABAMATI EXPRESS TRAIN NEAR GODHRA RAILWAY STATION ON 27TH FEBRUARY, 2002 AND SUBSEQUENT INCIDENCE OF VIOLENCE IN THE STATE OF GUJARAT IN THE AFTERMATH AND ADEQUACY OF ADMINISTRATIVE MEASURES TAKEN TO PREVENT AND DEAL WITH THE DISTURBANCE IN GODHRA AND SUBSEQUENT DISTURBANCE IN THE STATE. It also appears from the record that subsequently vide Government Notification dated 21.5.2002 issued by the State of Gujarat in Legal Department, the aforesaid Commission was reconstituted by converting the Single Member Commission into two Members Commission headed by Mr. Justice G.T.Nanavati, Retired Judge of the Hon'ble Supreme Court as the chair-person and Mr. Justice K.G.Shah, Retired Judge of the High Court of Gujarat as a member. Thereafter, vide another Government Notification issued by the State Government dated .3.6.2002 the earlier Government Notification dated 6.3.2002 came to be amended so as to include the incident of violence that took place on and from 27.2.2002 to 30.3.2002 and even the time limit for completion of the inquiry and submission of the report by the Commission came to be extended upto 5.12.2002. It appears that thereafter the said time limit has been extended from time to time. It also further appears from the record that thereafter earlier notification dated 6.3.2002 came to be further amended and the scope of inquiry was further widened and/or extended vide Government Notification dated 20.7.2004 for inquiring into the role and conduct of the Chief Minister, other Ministers in his Council, Police Officers, other individuals and organizations in both the events referred to earlier in Clause (a) and (b) and the role and conduct of the then Chief Minister and other Minister(s) in his council of Ministers, Police Officers, (i) in dealing with any political or non-political organization which may be found to have been involved in any of the events referred to the incident and /or subsequent, (ii) in the matter of providing protection, relief and rehabilitation to the victims of communal riots (iii) in the matter of recommendations and directions given by National Human Rights Commission from time to time, came to be included. By the said notification dated 20.7.2004, in earlier Para-2 of the terms of reference and in Sub-para (1) in Clause (b), after the words incidence of violence, for the words and figures `that took place on and from 27th February, 2002 to 30th March, 2002', the words and figures that took place on and from 27th February, 2002 to 31st May, 2002 as well as in para-3 for the words three months, the words Son or before 5th December, 2005 came to be substituted. Thus, the terms of reference of Commission head by Mr. Justice G.T.Nanavati, Former Judge of the Hon'ble Supreme Court as the Chairperson and Mr. Justice K.G.Shah, Former Judge of the High of Gujarat as a Member reads as under :

1. To inquire into-

(a) the facts, circumstances and the course of events of the incidents that led to setting on fire some coaches of the Sabarmati Express train on 27.2.2002 near Godhra railway station;

(b) the facts, circumstances and course of events of the subsequent incidents of violence in the State in the aftermath of the Godhra incident; and

(c) the adequacy of administrative measures taken to prevent and deal with the disturbance in Godhra and subsequent disturbance in the State;

(d) Role and conduct of the then Chief Minister and /or any other Minister(s) in his Council of Ministers, Police Officers, other individuals and organizations in both the events referred to in Clause (a) and (b).

(e) Role and conduct of the then Chief Minister and / or any other Minister(s) in his Council of Ministers, Police Officers (i) in dealing with any political or non political organization which may be found to have been involved in any of the events referred to hereinabove, (ii) in the matter of providing protection, relief and rehabilitation to the victims of communal riots (iii) in the matter of recommendations and directions given by National Human Rights Commission from time to time.

2. To ascertain as to whether the incident at Godhra was a pre-planned and whether information was available with the agencies which could have been used to prevent the incident;

3. To recommend suitable measures to prevent recurrence of such incidents in future;

[ii] It appears from the record that while the proceedings before the Commission appointed by the State Government for the aforesaid inquiries is going on to inquire into the above aspects, the Government of India, Ministry of Railways, (Railway Board) in exercise of the powers under Article 73 of the Constitution of India constituted a High Level Committee consisting of Mr. Justice U.C.Banerjee, Retired Judge of the Supreme Court of India; (hereinafter referred to as the Committee for short)

(a) to ascertain the the PRECISE CAUSE OF FIRE in coach S-6 of Sabarmati Express on 27.2.2002 and to recommend suitable measures to prevent such incidents;

(b) to ascertain the events, developments and circumstances that took place after the train left Muzaffarpur on 25th February, 2002 and before it reached Godhra and beyond (including the States of Bihar, Uttar Pradesh and Madhya Pradesh) and if those causes individually or conjointly, contributed to the fire;

C. to ascertain why the said train, including S-6 coach was overcrowded with passengers, many of whom were without reservation, and if their behavior in any manner contributed to the fire;

d. to ascertain if there was any wrongful act, neglect or default on the part of the officials and workmen of the railway administration and its security staff but for which such large-scale loss to

life and property could have been averted;

(e) to ascertain any other probable internal and external factors and/or aggravating circumstances that may have led to the tragedy;

(f) to ascertain acts of commission and/or omission responsible for the cause of fire and to fix responsibility for the cause of fire and to fix responsibility for the same, individually or collectively;

(g) to examine the adequacy of the fire retardant features of railway coaches and fire fighting measures with a view to inducting a superior technology and to suggest safeguards for prevention of fire on trains and at railway stations;

(h) to examine the preparedness and actual response with respect to rescue and relief operations in S-6 coach and recommend measures for improving the quality of response in such situations;

[iii] It also further appears that the proceedings before the aforesaid Committee was in progress, the interim report came to be submitted by the Committee on 27.2.2005. That thereafter, the present Special Civil Application came to be filed by the petitioner - a victim of the incident in question who was also traveling in S-6 Coach of Sabarmati Express on that very day i.e. 27.2.2002 for various reliefs and even challenging constitution of Mr. Justice U.C. Banerjee Committee on the grounds discussed hereinafter. This Court issued notice upon the respondents by order dated 29.8.2005 and the notice was made returnable on 9.9.2005 and the matter came to be heard further by the learned Single Judge on 26.10.2005 and an interim order was passed by this Court on 26.10.2005 which reads as under :

Heard learned counsel for the parties.

It is observed that if respondent No. 6 " Commission delivers any Report, the same will not be implemented by the respondent Nos. 1 to 3 herein, without the permission of this Court, till the next date of hearing. S.O. To 25.11.2005.

[iv] It is required to be noted at this stage that the said interim order has been continued with the consent of the parties from time to time and the same is still in operation.

[v] It also further appears from the record that thereafter vide Notification dated 2.12.2005 issued by the Government of India, Ministry of Railways (Railway Board) in exercise of the powers conferred under Section 11 of the Commissions of Inquiry Act, 1952 (Act of 1952 for short ) directed that all the provisions of the Act shall apply to the said High Level Committee, by observing that pursuant to the notification dated 4.9.2004 the Committee has since commenced its investigation and in the process examined many witnesses and perused records but its investigation could not be completed for lack of cooperation from some vital witnesses for being examined and/or to produce related documents and in view of the difficulties being experienced by the Committee in effecting pearances of some witnesses and for ensuring production of related evidences / documents, it was thought fit that all the provisions of Sub-section (2) to (5) of Section 5 of the Commissions of Inquiry

Act, 1952 should be made applicable to the High Level Committee consisting of Mr. Justice U. C. Banerjee, retired Judge of the Hon'ble Supreme Court.

[vi] By way of Civil Application No. 12629 of 2005 in Special Civil Application No. 16500 of 2005 the petitioner sought to amend the main Special Civil Application by allowing the petitioner to challenge the notification dated 2.12.2005 also and to add the grounds and/or amend the Special Civil Application by adding certain pleadings challenging the subsequent notification dated 2.12.2005 and by order dated 19.12.2005 this Court allowed the said civil application and accordingly, allowed the petitioner to amend the main Special Civil Application as per the amendments sought in the said application and thereby, in the main Special Civil Application now the petitioner has challenged the earlier notification issued by the Central Government, Ministry of Railways (Railway Board) dated 4.9.2004 constituting a High Level Committee consisting of Mr. Justice U.C. Banerjee, Retired Judge of the Supreme Court as well as subsequent notification dated 2.12.2005 by which all the provisions of the Act of 1952 (including the provisions of Sub-section (2) to (5) of Section 5 of the Act, 1952) are made applicable to the said High Level Committee. In the mean time, considering the fact that some of the witnesses were summoned by the Committee, the petitioner with an apprehension that the main Special Civil Application will become infructuous if the proceedings before the Mr. Justice U.C. Banerjee Committee are allowed to be proceeded further and if no stay is granted by this Court and if the witnesses are examined by the said Committee who are already examined by the Commission appointed by the State Government and that those who are also witnesses in the criminal trial before the POTA Court, the same may affect the prosecution and the trial pending before the POTA Court and therefore, Civil Application No. 12631 of 2006 in Special Civil Application No. 16500 of 2005 came to be filed by the petitioner for interim relief to stay implementation and operation of the Notification by which Mr. Justice U.C. Banerjee Committee is constituted and further sought prayer to direct the respondents Nos. 1,2,3 and 6 not to call, interrogate, investigate, collect evidence, from any witness who has been examined by the Justice Nanavati Commission appointed by the State Government; and all such witnesses to whom summons are already issued by the State Commission; and further to restrain all the witnesses summoned by the Justice Nanavati Commission and order them not to appear before the respondent No. 6 i.e. High Level Committee consisting of Mr. Justice U.C. Banerjee which has now vested and conferred with the powers alike Commission under the Commissions of Inquiry Act; and further to direct the Railway Department, Ministry of Railways not to interfere with the working of the Justice Nanavati Commission; and to stay the proceedings of all kind before the respondent No. 6 - Mr. Justice U.C. Banerjee Committee, covering fire in Train No. 9166 Sabamati Express on February 27, 2002; and to restrain the High Level Committee from exercising the powers conferred to it by Notification No. ERB-1 / 2004/23/29(10 dated 2.12.2005. The aforesaid Civil Application came to be admitted by this Court after hearing the learned counsel appearing on behalf of the parties, more particularly, learned counsel appearing on behalf of the petitioner and the learned counsel appearing for the Central Government as well as Railways Department, Ministry of Railways, learned Additional Advocate General for State of Gujarat and the learned counsel appearing on behalf of Justice G.T.Nanavati Commission. After hearing them, the following order came to be passed by this Court on 19.12.2005.

Rule, returnable on 28th December, 2005. Shri N.D.Nanavati, learned Senior Advocate appearing along with Ms.Megha Jani, learned Advocate waives service of Rule on behalf of respondents Nos. 1,2 and 3 and Shri J.M.Malkan, learned Assistant Solicitor General of India waives service of Rule on behalf of respondents Nos. 4 and 5; and Shri S.N. Shelat, learned Advocate General appears along with Shri H.M.Prachchhak, learned AGP on behalf of the respondent No. 7. Though served in the main petition, nobody appears on behalf of respondent No. 6.

Heard Shri Nageshwar Rao, learned Senior Counsel appearing along with Shri Yogesh Mehta, learned advocate appearing on behalf of the applicant and learned counsel appearing on behalf of the other parties. Shri Nageshwar Rao, learned Senior Counsel has submitted that Justice U.C.Banerjee Commission has summoned certain witnesses to appear before it on 20th December, 2005 and, according to him, most of the witnesses, who are summoned by the Justice U.C.Banerjee Commission, have already appeared before the Justice G.T.Nanavati and Justice K.G. Shah Commission. Shri Nageshwar Rao has requested to grant stay of further proceedings before the Justice U.C.Banerjee Commission, which is opposed by Shri N.D.Nanavati, learned senior advocate appearing on behalf of the respondents Nos. 1, 2, and 3 and Shri Jitendra Malkan, learned Asst. Solicitor General of India on behalf of the respondent No. 4 and 5. However, considering the fact that the main matter is kept for further hearing and consideration of the interim relief on 28th December 2005 and when the main Special Civil Application is pending before this Court now challenging the Notification dated 2.12.2005 itself challenging the constitution of the Commission itself for the time being it will be appropriate to pass an order that if a proper application is made before the respondent No. 6 for granting adjournment by those witnesses who are summoned the same may be considered and dealt with objectively by the respondent No. 6 and the respondent No. 6 may adjourn the hearing and examining the said witnesses. With this hope, at present no order is passed with regard to any interim relief at this stage pending reply to be filed by the concerned respondents to the amended petition and the same will be considered on the next date of hearing. Direct Service is permitted today.

[vii] Thereafter some of the witnesses who were summoned by the High Level Committee submitted adjournment applications and considering the observations made by this Court in its order dated 19.12.2005, even the Mr. Justice U.C.Banerjee Committee adjourned the proceedings also. That thereafter some / few witnesses came to be examined by the Committee as they did not submit any application for adjournment and they voluntarily on the basis of the witness summons issued by the Committee appeared before the Justice U.C.Banerjee Committee and they were examined. It also appears from the record that thereafter some further witnesses were summoned by the Committee and a note was filed on behalf of the petitioner to take up Civil Application No. 12631 of 2005 for urgent hearing as they were requesting for further stay of the proceedings before Justice U.C.Banerjee Committee and this Court passed the following order on 10.2.2006.

This application is notified today pursuant to the Note being filed by Shri Y.F.Mehta, learned advocate appearing on behalf of the petitioner before the Registry of this Court looking to the urgency as according to the learned advocate for the petitioner two police officials are called tomorrow i.e. 11th February, 2006 and it is apprehended by the petitioner that if they are examined tomorrow, not only the entire petition will become infructuous but that it is likely to affect the other

criminal cases pending under the POTA Act also. Ms.Megha Jani, learned advocate appearing on behalf of the Railway Administration has submitted that earlier this Court has already passed order that if the police officials who are called as witness/s, submit an application for adjournment considering the fact that the present Special Civil Application is pending, the Hon'ble Commission is required to consider the same. However, on last adjournment, an application for adjournment has not been submitted by any of the witnesses. Ms.Jani, learned advocate for Railways has also submitted that when the earlier order is already in force, there is no such extra ordinary urgency and let the matter be heard on 14th February, 2006 itself. At this stage, Mr. Sunit Shah, learned advocate for the State Government has submitted that looking to the extra ordinary situation considering Sabari Kumbh Mela being held in Dang District, presence of those police officials who are summoned tomorrow, is very much necessary and they are not in position to move out of the Gujarat State looking to the gravity of the situation and those police officials have already submitted an application for adjournment through their Head Quarter. If that is so, and there is an extra ordinary urgency which requires presence of those police officials who are summoned tomorrow and appropriate applications for adjournment are submitted before the Hon'ble Justice U.C.Banerjee Commission, certainly such applications will be considered otherwise also and it is hoped that considering an extra ordinary situation also, adjournment applications will be granted.

With this hope and observations, no any other interim order is passed today.

Adjourned to 14th February, 2006.

It will be open for the petitioner to communicate this order by Fax Message at the cost of the petitioner and Direct Service qua that is permitted.

[viii] Thereafter, the matter came to be heard for admission hearing as well as for interim relief on 21.2.2006 and as stated hereinabove, the matter came to be heard at length and this Court heard learned counsel appearing on behalf of the petitioner as well as the contesting respondents for admission as well as for interim relief. It is pertinent to note that even the learned counsel appearing on behalf of the contesting respondents felt that considering the contentious issues raised in the present Special Civil Application, it requires admission and is required to be heard finally in detail and therefore, this Court admitted the present Special Civil Application on 21.2.2006 itself and after hearing the learned counsel for the parties qua interim relief and after completing their submissions on the issue, the matter came to be adjourned for pronouncement of orders qua interim relief and therefore, this order is passed.

4. Shri Nageshwar Rao, learned senior counsel appearing with Shri Y.F.Mehta, learned advocate for the petitioner has raised the following contentions while challenging the constitution of Justice U.C.Banerjee Committee which is a High Level Committee constituted in exercise of the powers under Article 73 of the Constitution of India as well as challenging subsequent notification dated 2.12.2005 issued by the Government of India, Ministry of Railways (Railway Board) applying all the provisions of the Commissions of Inquiry Act, 1952 including the provisions of Sub-section (2) to (5) of Section-(5) of the Act of 1952.

(a) That the notifications are ultra vires.

(b) The execution proves co-extensive with the Legislative and executive powers cannot be exercised when is occupied by the legislative powers.

C. When the Commission appointed by the State Government to look into and inquire the cause of fire of S-6 coach of Sabarmati Express which took place on 27.2.2002 along with other aspects, is in existence and the said Commission is inquiring into the same, such High Level Committee could not have been constituted to inquire into the same matter.

(d) The notification constituting the High Level Committee of Mr. Justice U.C.Banerjee, in exercise of powers under Article 73 of the Constitution of India is in teeth of Section 119 of the Railways Act, 1989.

(d) Notification constituting High Level Committee is made with malafide intention and in conflict with the Commission appointed by the State Government i.e. Justice G.T.Nanavati Commission appointed under Section 3 of the Commissions of Inquiry Act, 1952.

5. Elaborating his above submissions, Shri Nageshwar Rao, learned senior counsel appearing on behalf of the petitioner while relying upon Section 119 of the Railways Act, 1989 (herein after referred to as the Act of 1989 for short and brevity) submitted that where a Commission of Inquiry is appointed under the Commissions of Inquiry Act, 1952 to inquire into an accident, any inquiry, investigation or other proceeding pending in relation to that accident shall not be proceeded with, and all records or other documents relating to such inquiry shall be forwarded to such authority as may be specified by the Central Government in this behalf. He has also placed reliance on Section 113, 114 and 115 of the Act of 1989 which reads as under :

113. Notice of railway accident :-(1) Where, in the course of working a railway.-

(a) any accident attended with loss of any human life, or with grievous hurt, as defined in the Indian Penal Code (45 of 1860), or with such serious injury to property as may be prescribed ; or

(b) any collision between trains of which one is a train carrying passengers; or [c] the derailment of any train carrying passengers, or of any part of such train; or

(d) any accident of a description usually attended with loss of human life or with such grievous hurt as aforesaid or with serious injury to property; or

(e) any accident, of any other description which the Central Government may notify in this behalf in the Official Gazette, occurs, the station master of the station nearest to the place at which the accident occurs or where there is no station master, the railway servant in charge of the section of the railway on which the accident occurs, shall without delay, give notice of the accident to the District Magistrate and office in charge of the police station within the local limits of which the accident occurs and to such other Magistrate or police officer as may be appointed in this behalf by



the Central Government.

(2) The railway administration within whose jurisdiction the accident occurs, as also the railway administration to whom the train involved in the accident belongs, shall without delay, give notice of the accident to the State Government and the Commissioner having jurisdiction over the place of the accident.

114. Inquiry by Commissioner (1) On the receipt of a notice under Section 113 of the occurrence of an accident to a train carrying passengers resulting in loss of human life or grievous hurt causing total or partial disablement of permanent nature to a passenger or serious damage to railway property, the Commissioner shall, as soon as may be, notify the railway administration in whose jurisdiction the accident occurred of his intention to hold any inquiry into the causes that led to the accident and shall at the same time fix and communicate the date, time and place of inquiry;

Provided that it shall be open to the Commissioner to hold an inquiry into any other accident which, in his opinion, requires the holding of such an inquiry.

(2) If for any reason, the Commissioner is not able to hold an inquiry as soon as may be after the occurrence of the accident, he shall notify the railway administration accordingly.

115. Inquiry by railway administration.- Where no inquiry is held by the Commissioner under Sub-section (1) of Section 114 or where the Commissioner has informed the railway administration under Sub-section (2) of that section that he is not able to hold an inquiry, the railway administration within whose jurisdiction the accident occurs, shall cause an inquiry to be made in accordance with the prescribed procedure.

He submitted that when an accident takes place, the railway administration within whose jurisdiction the accident occurs, as also the railway administration to whom the train involved in the accident belongs, is required to give notice of such accident to the State Government and the Commissioner having jurisdiction over the place of accident and as per the provisions of Section 114 of the Act, on receipt of such a notice under Section 113 of the Act of the occurrence of an accident carrying passengers resulting in loss of human life or grievous hurt causing total or partial disablement of permanent nature to a passenger or serious damage to railway property, the Commissioner shall, as soon as may be, notify the railway administration in whose jurisdiction the accident occurred of his intention to hold an inquiry into the cause that led to the accident and shall at the same time fix and communicate the date, time and place of inquiry. He has also submitted that as per Section 114(2) of the Act, if for any reason the Commissioner is not able to hold an inquiry as soon as may be after the occurrence of the accident, he shall notify the railway administration accordingly. Shri Nageshwar Rao, learned senior counsel has further submitted that in the present case considering the provisions of Section 119 of the Railways Act and considering the fact that for the incident in question, a Commission is already appointed by the State Government to inquire into the cause of fire for the incident and as it was not possible to hold inquiry considering the ban imposed under Section 119 of the Railways Act, the Commissioner did not hold any inquiry and in fact, the Commissioner communicated the reasons to the Railway Administration

accordingly, and in spite of that, under the guise of Notification dated 4.9.2004 in exercise of the powers under Article 73 of the Constitution of India, a High Level Committee consisting of Mr. Justice U.C.Banerjee is constituted, for which, the Commission is already appointed by the State Government consisting of Mr. Justice G.T.Nanavati and Mr. Justice K.G.Shah to inquire into the incident and the cause of fire for the incident and the other aspects and therefore, it is submitted that the Committee appointed exercising the powers under Article 73 of the Constitution of India is without jurisdiction and in teeth of Section 119 of the Railways Act which requires to be quashed and set aside. He has also further submitted that once the statute provides something to be done, it should be done only in accordance with the said statute and what could not have been done by the Railway Administration and by the Committee is now permitted to be done by the Notifications under challenge. In support of his above submissions, he has placed reliance upon the following decisions.

1. I.T.C. Bhadrachalam Paperboards and Anr. v. Mandal Revenue Officer, A.P. and Ors. , Emphasis supplied on observations in para- 30 at page-657
2. State of Sikkim v. Dorjee Tshering Bhutia and Ors. (1991) 4 SCC 243, Emphasis supplied on observations in para-15 at page-249.
3. State of Andhra Pradesh and Anr. v. Lavu Narendranath and Ors. Etc. 1971 (1) SCC 601 - Emphasis supplied on observations in paras-7 & 15.
4. Dayal Singh and Ors. v. Union of India - Emphasis supplied on observations in para-33 at page.603.
5. Indira Sawhney v. Union of India and Ors. (1996) SCC 506
6. M.K. Rappi and Ors. v. John and Ors. - Emphasis supplied on observations in para-12 at page-594.

Shri Nageshwar Rao has further submitted that there is prohibition under Section 119 of the Railways Act but under the guise of exercise of executive powers under Article 73 of the Constitution of India the said Mr. Justice U.C.Banerjee Committee has been constituted which is nothing but a nullity as what cannot be done directly, cannot be done indirectly also.

6. Relying upon Section 3 of the Act of 1952 read with Section 11, it is submitted that by subsequent notification dated 2.12.2005 when all the provisions of Commissions of Inquiry Act, 1952 are made applicable to the High Level Committee, it has changed the entire characteristic of the said High Level Committee. As such, he has submitted that by virtue of provisions of Section 11 of the Act of 1952, colour and characteristic of High Level Committee would not have been changed and it continuous to be a High Level Committee and as such, all the provisions of the Act of 1952 would not have been made applicable on the basis of the notification dated 2.12.2005 and it will be qua applicability of Sub-section (2) to (5) of Section 5 of the Act, 1952. [ This point is not required to be considered elaborately in detail as the learned counsel appearing on behalf of the Railway

Administration Shri N.D.Nanavati has fairly conceded before this Court that by virtue of Notification dated 2.12.2005 the provisions of Sub-section-(2) to (5) of Section 5 of the Commissions of Inquiry Act, 1952 would be applicable and the High Level Committee cannot be said to be a Commission appointed under Section 3 of the Act of 1952]. Though in the alternative, he has submitted that as per Section 3(1)(b) of the Act, 1952 in view of the Commission already appointed by the State Government i.e. Mr. Justice G.T.Nanavati Commission, the Central Government could not have appointed and/or constituted another Commission. However, said aspect is not required to be considered at this stage as as stated hereinabove, the learned counsel for the respondent Nos. 1 & 2 " Railway Administration has already conceded that this is not the Commission appointed under Section 3 of the Commissions of Inquiry Act, 1952.

7. Shri Nageshwar Rao, learned counsel on behalf of the petitioner has further submitted that constitution of the High Level Committee consisting of Mr. Justice U.C.Banerjee exercising the powers under Article 73 of the Constitution of India, and thereafter, issuance of further notification is malafide and for extraneous considerations. He requested to consider the time gap between the incident and constitution of the High Level Committee. He has submitted that the incident took place on 27.2.2002 and the Commission came to be appointed by the State Government under Section 3 of the Commissions of Inquiry Act, 1952 on 6.3.2002 to inquire into the cause of fire of the incident and other aspects and notification appointing High Level Committee exercising the powers under Article 73 of the Constitution of India is issued only on 4.9.2004 i.e. after a period of almost two years and seven months of the incident and after two years and six months of the appointment of the Commission by the State Government under the Act of 1952. Relying on the interim report submitted by Justice U.C.Banerjee Committee and summons to witnesses issued by the Committee, Shri Nageshwar Rao has submitted that the intention and inquiry made by the said Committee is to inquire into cause of fire and not for suggesting safety measures as contended on behalf of the contesting respondents. It is also further submitted by him that it is nothing but an eye wash. He has drawn attention of the Court to various findings and observations made by the Committee in its interim report and has submitted that the Committee is inquiring into the cause of fire of the incident which is directly in conflict with the terms of reference of the Commission appointed by the State Government. He has relied upon various finding, observations and sentences of the interim report submitted by the Mr. Justice Banerjee Committee which more particularly the following observations :

...It is, however, made clear that after the completion of witness-action before the High Level Committee, the undersigned may add a page or two as regards the causes of fire as well along with other issues referred to the High Level Committee as noted above.

Relying on the summons to one of the witnesses issued by the Committee, he has submitted that even the Committee itself has called upon the witnesses to state before the Committee / Commission 'as to the details of the incident of fire on Sabarmati Express on 27th February 2002 including the cause of fire'. It is submitted that the intention of appointment of the Committee is to change the nature of incident as accident. He has also further relied upon the judgment and order passed by the Railway Claims Tribunal, by which, the compensation is awarded to the victims in which it is specifically mentioned that the coach was set on fire by the mob. He has also further submitted that

the time when the interim report came to be submitted is too much co-incident. Relying upon various observations and the ultimate conclusion in the interim report, it is submitted by him that if the intention for appointing the High Level Committee was to suggest the safety measures, in that case, there must be something in the interim report with regard to the same. However, according to him, not a single word is mentioned on the issue and main object of the terms of reference. On the basis of above submissions, Shri Rao has submitted that the petitioner is the victim who was travelling in the said S-6 Coach of Sabarmati Express on 27.2.2002 and Criminal trial / proceedings are pending before the POTA Court and if the witnesses who are examined before the Justice G.T.Nanavati Commission are already examined and / or the witnesses who are yet to be examined and those likely to be examined in the criminal trial, are examined by the High Level Committee, in that case, it is likely to affect the criminal trial and the witnesses will also be influenced, biased and prejudiced adversely and therefore, it is also likely that the petitioner being the victim who has right to get justice provided under the Constitution of India and has right in his favour to see that the real culprits are convicted, would be adversely affected and / or his right would be defeated and therefore, it is his submission that over and above the other reasons, on this ground also he requested to grant stay of the further proceedings by and before the High Level Committee headed by Mr. Justice U.C.Banerjee. He has also requested to continue the relief which is already granted earlier by this Court.

7. Countering the above submissions, Shri N.D.Nanavati, learned senior advocate appearing on behalf of the Railway Administration has made his submissions. Shri Nanavati, learned senior advocate firstly challenged the locus standi of the petitioner to file the present Special Civil Application and to challenge the legality and validity of the impugned notifications and the constitution of the High Level Committee. He has submitted that this petition under Article 226 of the Constitution of India is not maintainable at the instance of the petitioner as the petitioner is not the aggrieved party. He has also further submitted that by the impugned notifications, no prejudice will be caused to the petitioner in any manner whatsoever, as for the personal injury while traveling at the time in train in question and at the time of incident, he has already been compensated for the same and there is no lis between the parties i.e. the petitioner and the contesting respondents. He has also further submitted that this is not the Public Interest Litigation taken over by the petitioner and this petition is not filed on behalf of the victims in the representative capacity. With half-heartedly Shri Nanavati has submitted that as such no cause has arisen within the territorial jurisdiction of this High Court of Gujarat because both these notifications are issued by the Central Government at Delhi and no cause of action is shown and / or said to have been arisen within the territorial jurisdiction of this High Court. On merits also, Shri Nanavati, learned senior advocate has submitted that what is being inquired into by the High Level Committee is not the same which is being inquired into by the Commission appointed by the State Government. He has submitted that the Committee is constituted to suggest and/or recommend suitable measures to prevent such incidents. He has relied upon the terms of reference of the Committee which are mentioned in the Notification dated 4.9.2004. Therefore, it is submitted that there is no ban of appointing the Committee to inquire into the things which are not the same being inquired into by the Commission appointed by the State Government appointed under the Commissions of Inquiry Act, 1952. He has also submitted that to ascertain precise cause of action, is different than to ascertain the facts that led to setting on fire. He has further submitted that inquiry by the Commission appointed by the

State Government is on assumption that the coaches, more particularly, S-6 Coach was set on fire by the mob. He has also further submitted that the High Level Committee is appointed to ascertain the precise cause of fire in S-6 Coach on 27.2.2002 and whether fire was caused in coach because of technical element or mechanical failure or, whether any highly inflammable material was stored in the said coach and fire took place or whether it was pured in by somebody else from the outside by some miscreants and such other, are the issues required to be dealt with by the High Level Committee. He has also further submitted that as such, on inquiry of the aforesaid causes, the committee is to suggest the remedial measures for future and the same is not part of the terms of reference of the Commission appointed by the State Government. So far as the challenge to the Notification dated 4.9.2002 is concerned, he has submitted that the notification issued constituting the High Level Committee exercising the powers under Article 73 of the Constitution of India is valid exercise of the powers and that the contention on behalf of the petitioner that this notification is ultra vires and is issued in teeth of Section 119 of the Railways Act, is not correct.

8. So far as the allegations of malafide are concerned, Shri Nanavati, learned senior advocate has submitted that there are no pleadings in the petition and there are some vague averments made in the petition. He has submitted that unless some cogent material is produced and placed on record in support of whatever the averments made in the petition with regard to the malafide, this Court should not take any cognisance of the same.

9. Meeting with the contentious on behalf of the petitioner with regard to the provisions of the Railway Act, more particularly, Section 114 and 119 of the Act, Shri Nanavati has submitted that Section 119 of the Railway Act is in relation to the inquiry relating to the accident only and neither of the notifications and the terms of reference of the Commission appointed by the State Government makes any reference to the accident and as such, there is no reference to the accident being inquired into and the same is with regard to some incident. He has submitted that there is distinction between the connotation accident and incident and therefore, notification and constitution of High Level Committee is valid and it is not in the teeth of Section 119 of the Railways Act as alleged. As stated above, it is already conceded by Shri N.D.Nanavati, learned senior advocate appearing on behalf of the railway administration that by virtue of subsequent notification dated 2.12.2005, the colour and characteristic of the High Level Committee will not be changed and only some further powers as conferred under Sub-section-(2) to (5) of Section 5 of the Act of 1952 are conferred and its effect cannot be termed as the converting the Committee into Commission appointed under the Commissions of Inquiry Act, 1952.

10. Shri N.D.Nanavati, learned senior advocate has relied upon the judgment of the Hon'ble Supreme Court in case of State of Karnataka v. Union of India and Anr. (1977) 4 SCC 608 and relied on observations contained in paras-16,16-A, 17 to 25, 52, 53 and 153 in support of his above submissions and has requested not to grant any interim relief. He has further submitted that merely because the petition requires admission, is not a ground to grant any interim relief and that neither the balance of convenience, nor there is any prima facie case in favour of the petitioner and if the interim relief as prayed for is not granted, as such, no prejudice is likely to be caused to the petitioner and that the petitioner is not likely to suffer any irreparable loss and therefore, it is requested not to grant any relief.

11. No other submissions made on behalf of the either parties.

12. Heard the learned counsel appearing on behalf of the respective parties qua the interim relief. It is required to be noted that in an unfortunate incident that took place on 27.2.2002 and for whatever be the reasons fire took place in S-6 Coach of Sabarmati Express train wherein 58 passengers / persons were burnt alive and more than 40 persons were injured and in the subsequent violence in various parts of the State of Gujarat, many persons have lost their lives and many others injured. To know the cause of fire is the main concern of all. The State Government therefore decided to appoint Commission of Inquiry under Section 3 of the Commissions of Inquiry Act, 1952 and to inquire into and report on in respect of the aforesaid incident. The terms of reference to inquire into by the Commission appointed by the State Government i.e. Mr. Justice G.T.Nanavati Commission is already referred and reproduced hereinabove. It is required to be noted that for the said incident which took place on 27.2.2002 criminal proceedings and the trial are pending before the Special POTA Court. After a period of almost two years and seven months the Central Government, Ministry of Railways (Railway Board) has appointed a High Level Committee exercising the powers under Article 73 of the Constitution of India and the terms of reference of the said High Level Committee is already reproduced and referred to hereinabove. Relying upon the provisions of the Railways Act, more particularly, Section 113, 114, 115 and 119 it is submitted on behalf of the petitioner that notifications appointing the High Level Committee exercising the powers under Article 73 of the Constitution of India which is in exercise of the administrative powers is nullity and in the teeth of Section 119 of the Railways Act 1989. It is required to be noted that even the Commissioner has assigned its reasons as required to be assigned under Section 114(2) of the Railways Act showing its inability to hold inquiry with regard to the incident in question considering the provisions of Section 119 of Railways Act. It is required to be noted that apart from Section 119 of the Act, even under Section 3 of the Commissions of Inquiry Act, 1952, more particularly, Section-3(B), where any Commission has been appointed by the State Government to inquire into any matter, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission is appointed by the State Government is functioning. It is required to be noted that so far as the High Level Committee constituted by the Central Government vide notification dated 4.9.2004 exercising the powers under Article 73 of the Constitution of India, is not the Commission appointed under the Commissions of Inquiry Act, 1952 and even it is also conceded by the learned counsel appearing on behalf of the contesting respondents. Therefore, the question which is required to be considered is, whether for the same matter which is being inquired into by the Commission appointed by the State Government appointed under Section 3 of the Commissions of Inquiry Act, 1952, even appointment of the Committee constituted in exercise of the powers under Article 73 of the Constitution of India is permissible or not. It is the contention on behalf of the petitioner that the Committee is constituted to inquire into the cause of fire and the very matter i.e. to inquiry with regard to cause of fire is already being inquired into by the State Government and therefore, the terms of reference of the High Level Committee, in my opinion, is directly seems to be in conflict with the terms of reference of the Commission appointed by the State Government. The learned counsel appearing on behalf of the petitioner has relied upon the interim report submitted by the Committee as well as witness's summons issued by the Commission in which it is specifically mentioned that it is to inquire into the cause of fire. It is also further submitted by the learned counsel for the petitioner that the witnesses

who are summoned by the Committee are already examined by the Commission appointed by the State Government and / or to be examined and not only that those witnesses are also the witnesses in the trial before the POTA Court and therefore, the finding not only is likely to affect the trial only but are also likely to influence the witnesses also and therefore, they have prayed for stay of the further proceedings before the Committee. Against which, it is the contention on behalf of the contesting respondents that the Committee is inquiring in the cause of fire to suggest and recommend the safety measures which is not being inquired into by the Commission appointed by the State Government. It is required to be noted that to inquire the cause of fire is a common inquiry held by the Commission as well as the Committee. Therefore, to inquire into the cause of fire by the Committee prima facie seems to be directly in conflict with what is being inquired into by the Commission appointed by the State Government, might be for different purposes. As stated hereinabove, inquiry with regard to cause of fire is common. If the Central Government, Ministry of Railways intends to have suggestion and recommendations as regards the safety measures, they could have done so after availing finding by the Commission appointed by the State Government appointed under the Commissions of Inquiry Act with regard to cause of fire and they could have waited till that date, more particularly, when the High Level Committee itself came to be constituted after a period of two years and seven months of appointment of Commission by the State Government. Therefore, considering the provisions of the Railways Act stated hereinabove as well as Section 3 of the Commissions of Inquiry Act, prima facie, this Court is of the opinion that the proceedings before the High Level Committee to inquire into the cause of fire should not be permitted to be proceeded further as the same would be in direct conflict with the terms of reference of the Commission appointed by the State Government. It is the apprehension on the part of the petitioner that witnesses who are summoned by the Committee are either already examined by the State level Commission and they are to be examined and/or they are witnesses before the POTA Court in criminal trial with regard to the aforesaid incident and therefore, trial is to be affected adversely and /or other witnesses are likely to be prejudiced. It is also apprehended by the petitioner that any finding might prejudice the proceedings before the Commission as well as the Special Court in criminal trial and so far as the outcome of the trial is concerned, the petitioner is vitally interested and affected party. Considering the above fact situation and the discussion not only there is prima facie case in favour of the petitioner but the balance of convenience is also in favour of the petitioner and if the interim relief as prayed for is not granted, then, irreparable loss and damage will be caused and not only the proceedings before the Commission appointed by the State Government but the criminal trial pending before the POTA Court and the witnesses are likely to be influenced.

11. Considering the aforesaid facts and relevant provisions of the Railways Act as well as the Commissions of Inquiry Act, this Court was of the firm opinion that the interim relief staying the further proceedings before the Committee was required to be granted and in fact, for pronouncement of the order the matter came to be adjourned to 7th March, 2006. However, though no judicial notice can be taken but it is reported in the Media such as television and Doordarshan and other channels and newspapers etc that Mr. Justice U.C.Banerjee Committee has submitted its report to the Central Government and also made it public. At this stage, it is required to note that lastly the matter was heard on 21.2.2006 and the matter was heard at length qua the interim relief and the same came to be adjourned to 7th March, 2006 for pronouncement of order qua interim relief. It is also most pertinent to note that the impression was given to this Court by the learned

counsel appearing on behalf of the parties that in between nothing is going to happen and that in between no dates have been given summoning the witnesses and therefore, no operative order was pronounced on that last hearing date. Had the attention of this Court been drawn to the fact that the Committee is likely to pronounce and submit its report, this Court on the last hearing day itself would have declared the operative portion of the order and the detail reasons would have been supplied subsequently. However, unfortunately it is reported that the High Level Committee headed by Justice U.C.Banerjee has already now submitted its report and finding thereof are also made public and therefore, now the question which is required to be considered is that what interim relief can be granted at this stage. It is required to be noted that the learned Single Judge of this Court (Coram : K.S.Jhaveri, J.) by its order dated 26.10.2005 passed the interim order observing that if the respondent No. 6 i.e. Mr. Justice U.C.Banerjee Committee delivers any report, the same will not be implemented by the Central Government and the Railway Administration without prior permission of this Court and the said interim relief is continued and in operation with the consent of the parties. At this stage, it is also required to be noted that though Civil Application was moved for interim relief and it was prayed to grant stay of the further proceedings before the Committee, at that stage, this Court did not grant any interim relief with the hope that as the matter is subjudice and pending before this Court wherein the very constitution of the High Level Committee itself is under challenge, the proceedings would be adjourned by the Committee, more particularly, when the Committee is headed by the Retired Judge of the Hon'ble Supreme Court of India. However, when this Court is to pronounce the order as to interim relief on 7th March, 2006, unfortunately, the High Level Committee headed by Mr. Justice U.C.Banerjee has submitted its report and the findings which have vital significance on the many aspects discussed above, are made public. Be that it may. Now the only question which is required to be considered by this Court is what further interim relief can be granted by this Court in view of the fact situation. As stated hereinabove, the learned Single Judge of this Court has already granted ad-interim relief on 26.10.2005 by observing that if the respondent No. 6 delivers any Report, the same will not be implemented by respondents Nos. 1 to 3 herein i.e. Union of India, Ministry of Railways, Commissioner of Railway Safety and the Chief Commissioner of Railway Safety without prior permission of this Court and the said interim relief has been continued with the consent of the parties from time to time and the same is in operation.

12. Considering the same and for the reasons stated above, according to my prima facie observations and the fact that prima facie this Court is of the opinion that at least inquiry with regard to cause of fire would be in direct conflict with the terms of reference of the Commission appointed by the State Government, the limited relief now can be granted in view of the fact situation which has arisen subsequently that in view of the fact that now the High Level Committee headed by Mr. Justice U.C.Banerjee, former Judge of the Supreme Court has already submitted its report to the Central Government and in fact, the findings are made public, in the larger interest of justice, it will be just and proper to grant interim relief during pendency of the present Special Civil Application to the effect that the report submitted by High Level Committee headed by Mr. Justice U.C.Banerjee, former Judge of the Supreme Court to the Central Government (if submitted) should not be further acted upon and relied upon in whichever or whatever manner whatsoever by anybody.



13. Accordingly, by way of interim relief, it is directed that during the pendency and till final disposal of the present Special Civil Application, the report submitted by High Level Committee headed by Mr. Justice U.C.Banerjee, former Judge of the Supreme Court to the Central Government shall not be further acted upon and relied upon by any of the respondents, their agents and servants and anybody in any manner whatsoever. The aforesaid interim relief is granted considering the fact that in the present Special Civil Application the constitution of the Committee itself is under challenge and if ultimately at the time of final hearing this Court finds that the Committee could not have been constituted and is without jurisdiction and / or de hors the law, then all the further proceedings and even the report can be declared nullity and can be set aside, more particularly, when the Committee itself was constituted after a period of two years and seven months and therefore, if the matter is fixed for final hearing within four weeks and the interim relief is granted, no further prejudice will be caused to the respondents. Therefore, to see that the present Special Civil Application does not render infructuous the aforesaid limited interim relief is granted.

14. At this stage, it is required to be noted that this Court has not elaborately dealt with the various submissions made on behalf of the learned counsel appearing on behalf of the parties and has not given any specific finding qua all the submissions inclusive of mala fide, locus standi, as the main Special Civil Application is yet to be decided finally. However, some prima findings are given by this Court while considering the question of interim relief and it is clarified and observed that whatever findings are given by this Court stated hereinabove are only prima facie for the purpose of considering the question of interim relief only and the same may not be construed as final finding as the main Special Civil Application is yet to be decided on merits and therefore, all the questions are kept open.

15. Before parting with this interim order, this Court could not restrain and is at pain to observe that it is a matter of regret that even though initial order was passed by this Court observing not to implement the report without prior permission of this Court, and thereafter the matter was heard in connection with the further interim relief and the matter was admitted on 21.2.2006 and thereafter the matter was adjourned on 7.3.2006 for pronouncement of the order regarding interim relief, it is noticed by this Court that the High Level Committee has handed over the report to the Railway Administration. Said aspect about handing over of the report and it being made to the public is very apparent by way of interview given by Mr. U.C.Banerjee, retired Judge of the Supreme Court who is heading the Committee. The report is also published and made known by way of newspapers and T.V. Channels. A judicial notice can be taken by this Court about the said aspect as the contents of the report have now already been published in the form of information given to the T.V.Channels and newspapers. It was expected from the High Level Committee to at least to wait till 7.3.2006 when this Court was to pronounce its order regarding the interim relief and/or at least to obtain appropriate order from this Court. Obviously, an attempt prima facie being made to make the present Special Civil Application infructuous. Whoever has given information about the contents of the report to the Media, has tried to over-reach the process of Court and as it is obvious that an attempt is made to nullify the present proceedings. It is surprising that not only the contents of the report were even made public and Mr. Justice U.C.Banerjee who was heading the said High Level Committee has even held the Press Conference as noticed by everyone. Even if the report was handed over, its contents were not required to be made public in the aforesaid manner and no

publicity should have been made about the contents when the matter was awaiting decision regarding interim relief. It is also required to be noted that when ad-interim injunction was already granted by this Court as back as on 26.10.2005 regarding implementing the report without prior permission of this Court and the same has even been continued with the consent of the learned counsel appearing on behalf of the parties and the same is also in force even today and therefore, in my view, the contents and the finding of the said report could not have been made public without permission of this Court. The fact therefore clearly reveals that even an attempt is being made to overreach the process of Court. Nobody is above the law and if the orders of the Court are taken in such a manner, it may result into collapse of the entire judicial system. It is also required to be noted that normally when the matter is sub-judice before the Court, more particularly, in the present case the present Special Civil Application was admitted on 21.2.2006 and when the order with regard to interim relief was to be pronounced on 7.3.2006, the Committee declared its report and it appears that on 3rd / 4th March, 2006 i.e. only 3 " 4 days before the date of pronouncement of the order on interim relief. As stated hereinabove, in fact, when the date was fixed for pronouncement of the order on 7.3.2006, on last date of hearing 21.2.2006 an impression was given to the Court by the learned counsels appearing on behalf of the parties that in between nothing is going to happen and no witnesses are summoned in between and it appears that after 21.2.2006, no further witnesses seemed to have been summoned and/or examined and report is submitted on 4th March, 2006. Therefore, when the order on interim relief was to be pronounced on 7.3.2006, this Court fails to appreciate the reasons for submitting the report by the High Level Committee headed by Mr. Justice U.C.Banerjee only three days prior thereto and that too without permission of this Court. Propriety demands that when the matter is subjudice before the Court and only after three days the order on interim relief was to be pronounced, it was expected of a High Level Committee at least to wait till 7.3.2006 and/or at least not to make public the contents if it was required to submit the report. Be that it may. Whatever damage had to be caused to undermine the authority of Court, is already caused. However, to avoid any further damage and with a view to see that present Special Civil Application is not further made infructuous, the aforesaid interim relief is required to be granted and is granted. As such, this Court could have called the Secretary of the High Level Committee as well as the Railway Board to personally remain present before this Court to explain as to what were the compelling reasons to submit the report immediately without waiting upto 7.3.2006 and/or without waiting for the permission of this Court and to make the said report public by giving information to the Press. However, in view of the fact that since the business is changed and the main matter is now required to be heard by some another Bench and this Court is at present required to consider the question of with regard to interim relief and pronouncement of order on interim relief for which the hearing has taken place earlier, this Court is not passing any order on that issues and the same can be dealt with suitably by the Bench which will be taking up such matters. Considering the subsequent developments in the matter, and for the reasons stated hereinabove, the Railway Administration and all others are directed not to give any further publicity to the said report and not to implement and/or not to take any further action on the basis of the report which might have been submitted by the High Level Committee headed by Mr. Justice U.C.Banerjee to the Railways, meaning thereby, said report shall not be further acted upon and relied upon in any manner whatsoever by anybody inclusive of the respondents. In view of the facts and circumstances of the case, final hearing of the present Special Civil Application is fixed in the week commencing from 3rd April, 2006.

Interim order to be complied with accordingly.

At this stage, Shri N.D.Nanavati, learned senior advocate appearing on behalf of the Railway Administration has requested to stay the implementation and operation of this order. However, for the reasons stated in the present order as well as considering the subsequent conduct of the respondents after 21st February, 2006, the prayer made by Shri Nanavati is rejected.