

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
REVIEW PETITION (CRIMINAL) No. OF 2018
IN
WRIT PETITION CRIMINAL No. 169 OF 2017

IN THE MATTER OF:

Campaign for Judicial Accountability and Reforms

Through its Secretary

6/6 basement, Jangpura B

Delhi – 110014

....PETITIONER

VERSUS

1. Union of India

Through its secretary,

Department of Personnel and Training

North Block, Central Secretariat

New Delhi – 110001

...RESPONDENT NO. 1

2. Central Bureau of Investigation

Through Its Director

CGO COMPLEX, LODHI ROAD

NEW DELHI-110003

...RESPONDENT NO. 2

WRIT PETITION (CRIMINAL) No. 169 OF 2017

IN THE MATTER OF:

Campaign for Judicial Accountability and Reforms

Through its Secretary

6/6 basement, Jangpura B
Delhi – 110014

...PETITIONER

VERSUS

1. Union of India
Through its secretary,
Department of Personnel and Training
North Block, Central Secretariat
New Delhi – 110001

...RESPONDENT NO. 1

2. Central Bureau of Investigation
Through Its Director
CGO COMPLEX, LODHI ROAD
NEW DELHI-110003

...RESPONDENT NO. 2

**A REVIEW PETITION (CRIMINAL) UNDER ARTICLE 137 OF
CONSTITUTION OF INDIA READ WITH ORDER XL RULE 2 AND ORDER
XLVII RULE 6 OF THE SUPREME COURT RULES, 1966 AGAINST THE
IMPUGNED FINAL ORDER 01.12.2017 PASSED BY THE HON'BLE
SUPREME COURT OF INDIA IN CRIMINAL WRIT PETITION NO. 169 OF
2017**

TO
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF THE PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHEWETH:

1. By way of the present Review Petition under Article 137 of the Constitution of India, the Petitioner prays for review of the final Judgment and Order dated 1.12.2017, passed by this Hon'ble Court in Criminal Writ Petition No. 169 of 2017. A true copy of the judgment of this Hon'ble Court in Criminal Writ Petition No. 169 of 2017 is annexed as **Annexure P-1 (pages ___ to ____)**.

2. Given the seminal importance of this Hon'ble Court's role in Indian democracy, it is crucial that this institution, which is the final arbiter of the Constitution and the last sentinel guarding every citizen's fundamental rights against encroachment by the government, is protected from any attempt to compromise its integrity and independence. Therefore, when a First Information Report is lodged by the Central Bureau of Investigation against a retired High Court judge, the middlemen and other unnamed private and public functionaries, and raids are made unearthing crores of rupees meant to be used as bribes to procure a favorable order in a petition pending before this Hon'ble Court, the Petitioner remains of the view that the same must be investigated with alacrity, honesty and rigour. It is also important that such investigation, as it involves an attempt to influence the outcome of a matter which was pending before this Hon'ble Court, must not be left with an agency which is fully controlled by the Government. Therefore, alarmed by the gravity of the offences alleged in the CBI FIR, but well aware that the CBI, which is controlled by the executive, can be used to compromise the independence of the Judiciary, the present Petitioner, filed Writ Petition (Crl.) No. 169 of 2017 praying that a Special Investigative Team be instituted under the supervision of a retired Chief Justice of this Hon'ble Court to investigate the allegations raised in the FIR and ensure a completely transparent, independent and thorough investigation. This independent investigation was crucial to ensure that the independence

and integrity of the judiciary is not compromised as well as to maintain public confidence in the judiciary.

3. However, this Hon'ble Court vide the judgment dated 01.12.2017 not only dismissed the petition filed in public interest by terming it "... wholly frivolous, ... contemptuous, unwarranted, aim[ed] at scandalizing the highest judicial system of the country" but also penalized the petitioner for approaching this Hon'ble Court and pursuing the said PIL by imposing a cost of Rupees Twenty five lakhs (Rs. 25,00,000/-) to be deposited within six weeks of the said order.
4. It is submitted that the Judgement under Review contains several errors apparent on the face of the record leading to a grave miscarriage of justice, providing sufficient reason, in the facts and circumstances of the case, for this Hon'ble Court to exercise its power of review and correct the error in order to secure the ends of justice.

BRIEF FACTS

Before setting out the grounds for review, the Petitioner wishes to briefly reiterate certain facts and circumstances which are relevant for the purposes of the present Petition. The same are as follows:

- i. The present petitioner organisation is the Campaign for Judicial Accountability and Reforms (CJAR). CJAR has worked tirelessly for many years to ensure an independent and upright judiciary. CJAR works in public interest on issues of judicial accountability and reforms and has over the years organised various seminars, discussions and national conventions. CJAR has sent various representations to the Hon'ble Chief Justice of India on matter of judicial reforms, as well as complaints against Judges that have resulted in initiation of in house inquiries such as in the cases of Justice Soumitra Sen, Justice P.D. Dinakaran, Justice Nagarjuna

Reddy, etc. as well as the initiation of impeachment proceedings in the Parliament in some cases. The Executive Committee of CJAR has authorised that this review petition be filed through its secretary.

- ii.** Prasad Education Trust (“the Education Trust”) applied to the Ministry of Health and Family Welfare (“the Ministry”), Government of India (GoI) to establish a new medical college at Lucknow called Prasad Institute of Medical Sciences (“the college”) commencing from the academic session 2016-2017. The Ministry forwarded the said application to the Medical Council of India (MCI) for evaluation and making recommendation to the Ministry u/s 10 A of the Indian Medical Council Act, 1956.
- iii.** Based on the assessment dated 30.12.2015 and compliance verification assessment dated 14.05.2016, the MCI recommended that the Central Government should not issue a letter of permission for establishment of the College at Lucknow by the Education Trust.
- iv.** On 08.06.2016 the Ministry accepted the recommendation of the MCI and rejected the application by Prasad Education Trust. However, on 11.08.2016, the Supreme Court Mandated Oversight Committee approved the scheme of establishment of the College by the Education Trust. On the approval by the Oversight Committee the Central Government granted a Letter of Permission dt. 20.8.2016 to Prasad Education Trust for the establishment of the College.
- v.** Pursuant to the Government’s grant of permission, the MCI conducted assessments on 11.11.16-12.11.16 and on 9.12.2016-10.12.2016 to verify whether the College set up by the Education Trust complied with the undertaking given by the Education Trust to the Central Government.

- vi.** On 26.12.2016 the MCI informed the Ministry that it found that the College set up established by the Trust had failed to abide by the undertaking given to the Central Govt. and should be debarred from admitting students for the two academic years 2017-18 and 2018-19, as the infrastructure and facilities of the college were found to be grossly deficient and inadequate for a functioning medical college.

- vii.** On 31.5.2016, the Ministry after considering the recommendation of the MCI, the report of the Director General of Health Services and the view of the Oversight Committee accepted the recommendation of the MCI refusing permission to the Trust as the college set up by it severely lacked critical infrastructural facilities and equipment. The Ministry further debarred the college from admitting students for two years (2017-2018 and 2018-2019) and authorised MCI to encash the College's Bank Guarantee of Rupees Two Crores.

- viii.** Thereafter the Education Trust filed W.P. (C) 442 of 2017 before this Hon'ble Court challenging the Order of the Ministry dated 31.5.2017. The matter was tagged along with several other Petitions filed by colleges praying for similar reliefs. This Hon'ble Court vide Order dated 01.8.2017 in W.P. (C) 442 of 2017 directed the Central Government to re-evaluate the recommendations of the MCI, the Director General of Health Services and the Oversight Committee, and to grant another hearing to the colleges seeking relief.

- ix.** After granting an oral hearing to the College on 03.08.2017, the Ministry decided to uphold its earlier decision dated 31.05.2017 debarring the college for two academic years and encashing the bank guarantee. On 10.08.2017, the Ministry reiterated its earlier decision dated 31.05.2017 debarring the college from admitting students for a period of two years i.e. 2017-18 and 2018-19, and

authorised the MCI to encash the Bank Guarantee of Rupees Two Crores.

- x.** On 24.8.2017, W.P. (C) No. 442 of 2017, which was pending before this Hon'ble Court, was withdrawn by the Education Trust with liberty to move the Hon'ble Allahabad High Court. As it appears from the CBI FIR that the decision to withdraw the Writ Petition and approach the Hon'ble High Court of Allahabad was done on the advice of Shri I.M. Qudussi, a retired Justice of the Orissa High Court. Shri I.M. Qudussi, has been named in FIR No. 1064, dated 19.09.2017 registered by the CBI in New Delhi, as having acted in furtherance of a criminal conspiracy to procure favourable order for Prasad Education Trust.

- xi.** On 25.08.2017 the Education Trust filed Misc. Petition No. 19870 of 2017 before the Hon'ble Allahabad High Court challenging the Ministry's Order dt. 10.08.2017 debarring the college from admitting students for the next two academic years and directing the MCI to encash the college's Bank Guarantee of Rupees Two Crores. The Hon'ble High Court (Bench: Narayan Shukla and Virendra Kumar-II, JJ.) on the very same day passed an interim order in favour of the College, directing that the college shall not be de-listed from the counselling till the next date of hearing i.e. 31.08.2017. Further the court also stayed the encashment of Bank Guarantee till the next date of listing and allowed the counselling for 2017-18 to continue.

- xii.** On 29.8.2017, the MCI filed SLP (C) No. 22427 of 2017 against the aforesaid order of the Allahabad High Court. The SLP was disposed off by this Hon'ble Court on oral statement made by the Senior Counsel appearing for the Education Trust that they did not wish to take advantage of any of the interim reliefs passed by the High Court except for stay of encashment of Bank Guarantee. This Hon'ble

Court on the basis of the said statement not only disposed off the SLP filed against an interim order passed by the High Court but also disposed off the main writ petition which was pending in the High Court and also granted liberty to the writ petitioner to file a fresh writ petition in the Supreme Court.

- xiii.** On 31.08.2017 the Education Trust filed a W.P. (C) No. 797/2017 praying for the Order of Ministry dtd. 10.08.2017 (debarring the College from admitting students for the academic years 2017-18 and 2018-19 and directing the MCI to encash the bank guarantee of Rupees Two Crores) to be quashed. The notice was issued in the Writ Petition and it was directed to be listed on 04.09.2017.
- xiv.** This Hon'ble Court Vide Order dtd 04.09.2017 stayed the encashment of the bank guarantee till 11.09.2017.
- xv.** On 11.09.2017, this Hon'ble Court directed that the Writ Petition (Civil) No. 797/2017 be listed for 18.09.2017
- xvi.** This Hon'ble Court vide Order dt. 18.9.17, (uploaded on the Supreme Court website on 21.9.2017), directed that the bank guarantee of Rupees Two Crores deposited by the College shall not be encashed. This Hon'ble Court further directed that the MCI should inspect the College and consider granting permission to the college to enroll students for the academic year 2018-2019. The Writ Petition filed by the College was accordingly disposed of. However, the college was not permitted to enroll students for the year 2017-18.
- xvii.** On 19.09.2016, FIR No. 1064 was registered by the CBI in New Delhi u/s 120 (B) of the IPC against Shri I.M. Quddusi, Retd. Justice of the High Court of Odisha, B.P. Yadav and Palash Yadav,

who are managing the affairs of Prasad Education Trust, other named private persons as well as unknown public servants and private persons for acting in furtherance of a criminal conspiracy to provide illegal gratification in exchange for the procurement of favourable orders in pending Writ Petition (Civil) No. 797 of 2017.

xviii. The FIR further revealed that Shri I.M. Quiddusi, B.P. Yadav, Palash Yadav and a certain Sh. Biswanath Agarwala were likely to meet in Delhi in the near future in order to deliver the already agreed illegal gratification. On the same night the CBI conducted a raid in the premises of Shri Quiddusi and other accused in the CBI FIR and reportedly recovered about 2 crores in cash. The CBI also arrested Shri. Qudussi, Shri B.P. Yadav, Shri Palash Yadav, Shri Bishwanath Agarwala among others.

xix. On 21.09.2017, the Order of this Hon'ble Court dated 18.09.17 in W.P (C) 797 OF 2017 was uploaded on the website of this Hon'ble Court whereby, as mentioned above, it was directed that the bank guarantee of Rupees Two Crores deposited by the College shall not be encashed. This Hon'ble Court further directed that the MCI should inspect the College to consider its application for enrollment of students for the academic year 2018-2019. However, the college was not permitted to enroll students for the year 2017-18

xx. On 06.11.2017, the Present Petitioner's Writ Petition (Cr) No. 169 of 2017 before this Hon'ble Court was registered, praying that a Special Investigation Team be instituted under the aegis of a retired Chief Justice of this Hon'ble Court to investigate the allegations raised in FIR No 1064 dated 19.9.2017 filed by the CBI.

- xxi.** On 08.11.2017, Writ Petition (Cr) No. 169 of 2017 was mentioned in Court No. 2 (Bench: Jasti Chelameswar and S. Abdul Nazeer, JJ.) wherein the Hon'ble Bench ordered that the matter be listed before them on 10.11.2017. The petition was mentioned in Court No. 2 because the Hon'ble Chief Justice of India was sitting in a Constitution Bench, and as per the existing practice, in such situations all mentioning are done before the next available senior most judge.
- xxii.** Later the same day, the registry of this Hon'ble Court informed the Petitioner's counsel that the Hon'ble CJI, had already passed an administrative order directing the said Writ Petition to be listed before some other bench.
- xxiii.** On 09.11.2017 a Writ Petition (Cr) No. 176 of 2017 was filed by Advocate Kamini Jaiswal before this Hon'ble Court. The Petition prayed for similar reliefs as those prayed for by the present Petitioner in W.P (Cr) No. 169 of 2017. The said writ was also mentioned in Court No. 2 i.e. before Justice Chelameswar and Justice Nazeer and the matter was directed to be listed before the same bench at 12:45 pm on the same day. Considering the gravity of the allegations raised in the FIR and the critical need to protect the integrity of this Hon'ble Court, the bench presided by the Hon'ble Justice Chelameswar passed an Order directing Advocate Kamini Jaiswal's Petition to be listed before the five senior-most judges of this Hon'ble on 13.11.2017.
- xxiv.** On 10.11.2017, Writ Petition (Cr) No. 169 of 2017 filed by the present Petitioner was listed before a bench of Hon'ble Justice Sikri and Justice Ashok Bhushan. The advocate for the Petitioner informed this Hon'ble Court that in Advocate Kamini Jaiswal's Writ Petition (Cr) No. 176 of 2017, praying for similar reliefs, this

Hon'ble Court had passed an Order on the previous day directing the matter to be placed before the five senior most judges of this Hon'ble Court on 13.11.2017. The bench of Hon'ble Justice Sikri and Justice Ashok Bhushan passed an Order directing the Petition to be listed before the Hon'ble CJI for appropriate directions. The Petition filed by the present Petitioner was not tagged along with the petition filed by Ms Kamini Jaiswal although both the petitions were similar in nature.

xxv. Some of the office bearers of the Supreme Court Bar Association (SCBA) led by its then President were also present at the hearing and they orally requested that the SCBA be impleaded in the matter and the said prayer was allowed.

xxvi. At 2:45 p.m. on the same day the Registry of this Hon'ble Court put up a cause list, listing the Petitioner's Writ Petition No. 169 of 2017 filed by the present Petitioner before a seven judge bench, to be heard at 3:00 pm on the same day. The bench was to be presided over by the Hon'ble Chief Justice and it included Justice A. K. Sikri and Justice Ashok Bhushan also but did not include any of other senior most judges of the Court. However, the matter was finally taken up by five judge bench of the Chief Justice, Justice R.K. Agrawal, Justice Arun Mishra, Justice Amitava Roy, and Justice A.M. Khanwilkar. The names of Justice A. K. Sikri and Justice Ashok Bhushan who were listed as being part of the original 7 judge bench were removed. It is imperative to note that three of the five judges on the constitutional bench had previously heard W.P (C) 797 OF 2017 matter which was the subject matter of the CBI's FIR.

xxvii. When the proceedings began before the constitutional bench, Court No.1 was crammed with lawyers. The Petitioner's counsel

was made aware that the said bench had been constituted to decide only the question regarding the master of roster which has arisen because of two different orders passed for listing the matters by two different courts in two similar petitions. Many of those lawyers who were not party to the proceedings started addressing the court and questioned the correctness of the Order dated 09.11.2017 passed by the bench presided over by the Hon'ble Justice Jasti Chelameswar in W.P (Cr) 176 of 2017, filed by Advocate Kamini Jaiswal, even though the said petition was not listed at that time and it was WP (CrL.) 169 of 2017 that was being heard. Although the Petitioner's counsel wanted to address on this issue, but he could not get a proper hearing.

xxviii. Finally, the constitutional bench passed an Order that the Hon'ble CJI is the Master of the Roster and the CJI alone can assign matters to a bench. It further held that any Order in contradiction of this was effectively annulled and would not bind the Hon'ble CJI. It also directed Writ Petition (Civil) No. 169 to be listed before a bench assigned by the Hon'ble CJI in two weeks.

xxix. The other Petition filed by Advocate Kamini Jaiswal was listed before this Court (Bench: R.K. Agrawal, Arun Mishra and A.M. Khanwilkar, JJ.) on 14.11.2017 and an Order was passed dismissing the same on the ground that Petitioner's prayer that the matter should not be heard by the Hon'ble CJI or by a bench assigned by the Hon'ble CJI was improper in law. The Order further observed that the concerns raised by the Petitioner regarding FIR No. 1064 dt 19.9.17 registered by the CBI containing allegations regarding giving of bribes to procure favourable orders in W.P (C) 797 of 2017 were wholly without merit and that the Petition was wholly unethical, unwarranted and a tactic aimed to bring disrepute to this Hon'ble Court. It would be pertinent hereto

mention that the said petition was not argued on merits by the Petitioner's counsel mainly on the ground that the matter could not have been heard by a bench which included the judge who happened to be part of the bench which had heard the said matter and which is subject matter of the CBI FIR.

xxx. The Petitioner's Writ Petition (Cr) No. 169 of 2017 was also listed before the same bench on 27.11.2017. The Petitioner's counsel made his submission for constitution of the SIT so that free and fair investigation into the aforesaid allegations could take place. The Petitioner's counsel made it clear that although the similar petition has been dismissed, the said dismissal order/judgment did not specifically deal with the prayer for the constitution of the SIT and therefore, submissions were made as to why constitution of such SIT is necessary in the interest of this institution itself. This Hon'ble Court after hearing the Petitioner's counsel and the learned Attorney General reserved the judgment.

xxxi. On 01.12.2017, this Hon'ble Court delivered the judgement and dismissed the Petition mainly on the ground that identical issues was agitated in the W.P (Cr) 176 of 2017 filed by Advocate Kamini Jaiswal and the same had already been dealt with in the Order dated 14.11.2017 and dismissed. This Hon'ble Court further observed that the Petitioner's Writ Petition was "wholly contemptuous", "scandalous" and unwarranted, and imposed exemplary cost of Rs. 25 Lakhs for pursuing this petition even after dismissal of the petition filed by Ms. Kamini Jaiswal.

The petitioner seeks review of the impugned judgement dated 1.12.2017 on the following amongst other grounds which are without prejudice to each other:

GROUND

A. Because this Hon'ble Court made an error apparent on the face of the record in dismissing the writ petition on the ground of it being vexatious, unwarranted, frivolous and contemptuous, despite there being the following undeniable facts:

- (i) An FIR has been lodged by the CBI wherein it has been categorically alleged by the CBI that an attempt was being made to procure favourable order in a matter pending before this Hon'ble Court;
- (ii) The CBI specifically named Shri I.M. Quddusi, Retd. Justice of the High Court of Odisha in the FIR who was conspiring with one middleman from Orissa and other private and unnamed public servants;
- (iii) The FIR categorically refers to different orders passed by this Hon'ble Court in the context of a particular college by a bench which was being preside over by the Hon'ble Chief Justice of India;
- (iv) According to the FIR, Shri. B.P. Yadav from Prasad Education Trust got in touch with Shri I.M. Quddusi, Retd. Justice of the High Court of Odisha and Smt. Bhawana Pandey r/o N-7, G.K. 1, New Delhi, through Sh. Sudhir Giri of Venkateshwara Medical College in Meerut and entered into a criminal conspiracy for getting the case settled.
- (v) The FIR lodged by the CBI further states that first petition filed by the said college was withdrawn on the advise of Shri IM Quddusi.
- (vi) FIR further alleges that Shri B. P. Yadav, in furtherance of the said conspiracy, requested Shri I M Quddusi and Smt. Bhawana Pandey to get the matter settled in the Apex Court through their contacts and

they further engaged Shri Biswanath Agarwala, a private person resident in Bhubaneswar, Orissa for getting the matter settled in the Apex Court.

- (vii) As per a newspaper report, the CBI received information that the set of people named in the FIR were likely to meet a hawala operator Biswanath Agarwal who had allegedly agreed to deliver the cash to the concerned relevant public functionary.
- (viii) That news reports have further revealed that in subsequent raids at 8 places, CBI recovered close to Rs 2 crore in cash and several incriminating documents. The agency had seized Rs 1 crore which the hawala operator had handed over to an aide of the retired Justice.

It is in view of the above-mentioned grave allegations made in the FIR lodged by the CBI, and the fact that the investigating agency, which is fully controlled by the executive, can be used to compromise the independence of the Judiciary, the present Petitioner, had filed the Writ Petition, praying that a Special Investigative Team be instituted under the aegis of a retired Chief Justice of this Hon'ble Court to investigate the allegations raised in the FIR and ensure a completely transparent, independent and thorough investigation. It is respectfully submitted that the PIL of this nature, especially when it was completely based on the FIR lodged by the CBI, could not have been termed vexatious or frivolous or unwarranted.

B. Because this Hon'ble Court erred in rejecting the prayer for the SIT on the ground that it has been averred in the petition that the FIR is against the highest judicial functionaries, but there was no reflection of any name of the Judge of this Court in the FIR. It is respectfully submitted that this Hon'ble Court erred in its findings that the petitioner has stated that judges of the Supreme Court are named in the FIR. The writ petition nowhere mentions that the FIR was against the sitting judge of this Hon'ble Court. As rightly held by this Hon'ble Court, no such FIR is even possible without permission of the Hon'ble CJI in view of the judgment of Verraswami Case. The Petitioner has at the most averred in the writ petition, *"The FIR lodged by the CBI is naming a former judge of a High Court as an accused, who has apparently been negotiating through a middle man to get the favourable order in a petition pending in this Hon'ble Court and the said petition was being heard by a bench headed by the present Chief Justice of India. It therefore casts an aspersion on the judiciary at the highest level. Hence, it becomes essential that this case is investigated under the supervision of a Special Investigation Team headed by a retired Chief Justice of this Hon'ble Court and that the investigation is not left to an agency fully controlled by the government i.e. the CBI which has lodged the FIR and currently undertaking the investigation."*

As is apparent from the above, the Petitioner nowhere averred that the FIR was against any sitting judge of this Hon'ble Court. In fact, the Petitioner while making submissions also clarified this and the same is recorded in the judgment also where it says, *"He, however, emphasized that the purpose of filing this petition is not to name any judge of this court but to protect the independence of the judiciary and in order to arrive at an*

impartial investigation, this court may appoint a SIT headed by a retired Chief Justice of India.”

However, the nature of allegations in the FIR is such that the investigation by the CBI would have involved the judges hearing the said medical college matter at some stage even at least to verify as to whether the judges' names were just being used by the accused only to make money for themselves. Therefore, the error has crept in when this Hon'ble Court said that there was no possibility of compromising the judicial independence as there was no investigation against the sitting judges of this court.

Further, merely because any such investigation by the CBI without the permission from the Hon'ble CJI was not possible that could certainly not be the reason for denying a fair and independent investigation by the SIT into such a serious allegation especially when this was the case wherein it would not have been proper for the Hon'ble CJI to deal with such request as he was presiding over the bench hearing the medical college case, which is subject matter of the investigation.

Furthermore, mere initiation of independent investigation as regards the allegations in a CBI FIR on attempts to procure order by paying bribes does not *per se* impinge on the honesty and reputation of the judges concerned. Therefore, a bonafide plea for investigation into bribery allegations raised in a FIR registered by the CBI in itself cannot be labelled as contemptuous and scandalous. Moreover, allowing a SIT headed by a retired judge of this Hon'ble Court to investigate the allegations made in the CBI FIR of procuring orders through illegal means, as opposed to the investigation by the CBI which

is controlled by the executive, only ensures the protection of the judiciary from baseless harassment.

- C. Because an error has crept in where this Hon'ble Court, while rejecting the prayer for the SIT, has tried to question the basic premise of the FIR by observing, "*we wonder, as to what favorable orders have been passed*", since no relief for current session was given to the Prasad Education Trust and rather this Court ordered for inspection by the MCI for the next session.

It is respectfully submitted that this Hon'ble Court erred in not appreciating that when the premier investigating agency of the country lodges an FIR where allegation of such a serious nature involving a case pending before this Hon'ble Court is made, the minimum which was required was to order an independent investigation to go into the root of the matter at least to find out the truth of the allegation even if the allegation seems to be baseless, instead of rejecting the said prayer at the threshold itself on the ground that this Court did not find any favourable order in favour of the college in question.

Moreover, it is with the greatest respect submitted that it may not be entirely correct to state that no favourable order was passed at any stage in the matter of the Prasad Education Trust. There are some orders where some reliefs were granted to the said college but this certainly does not mean that those orders were passed without having any merit in the case or passed for some extraneous considerations. Some of such favourable orders are as follows:

- (i) The college was allowed to withdraw its earlier Writ Petition no. 442/2017 and approach the Allahabad High Court vide order dated 24.08.2017.

- (ii) While hearing the Medical Council of India's SLP against the interim order given in favour of the College by the High Court, this Hon'ble Court vide order dated 29.08.2017, on the basis of the oral statement made by the Senior Counsel appearing for the Prasad Education Trust that they did not wish to take advantage of any of the interim reliefs passed by the High Court except for stay of encashment of Bank Guarantee and thus, without expressly setting aside the interim order passed by the High Court, disposed off the said SLP. At the same time, this Hon'ble Court also disposed off the main writ petition of the college which was pending in the High Court but granted liberty to the College to file its second writ petition under Article 32 before this Hon'ble Court and also the MCI was restrained from encashing the bank guarantee.
- (iii) Thereafter, fresh **Article** 32 petition i.e. Writ Petition no. 797/2017 was filed before this Hon'ble Court and this Hon'ble Court issued notice in the said writ petition.
- (iv) The stay on encashment of bank guarantee continued.
- (v) This Hon'ble Court vide Order dt. 18.9.17, (uploaded on the Supreme Court website on 21.9.2017), confirmed that the bank guarantee of Rupees Two Crores deposited by the College shall not be encashed. This Hon'ble Court further directed that the MCI should inspect the College to consider its prayer for granting permission to the college to enroll students for the academic year 2018-2019. However, the college was certainly not permitted to enroll students for the year 2017-18 as it might have been too late to grant such relief for the current academic session.

It is once again reiterated that the fact that these orders were passed in Prasad Education Trust case certainly does not mean that these were actuated by some extraneous considerations or passed without having any merit. However, irrespective of the orders passed, the present case clearly justified a fair and independent investigation by the SIT which could have ascertained the correctness of the allegation made in the FIR.

D. Because this Hon'ble Court made an error apparent on the face of the record by dismissing the writ petition with an Exemplary Cost of Rs. 25 lakhs merely because the writ petitioner pursued the matter despite dismissal of a similar writ petition earlier. It is respectfully submitted that mere dismissal of a similar petition does not disentitle the Petitioner to another petition, that too, one which was filed first, seeking similar prayer from placing its case before this Hon'ble Court. In fact, this petition was listed on 27.11.2017 for the first time for effective hearing on the merit of the case. Despite dismissal of similar petition, it was the duty of the Petitioner's counsel to make his submission before this Hon'ble Court so that he could persuade the court to grant the relief sought in the petition. This Hon'ble Court in the interest of justice has been revisiting its judgments, therefore, the Petitioner in bonafide belief argued the matter with a hope that this Hon'ble Court might entertain the petition if facts are properly placed before it and the court also gave patient hearing. At no stage the Petitioner's counsel was made to understand that it would be saddled with such an exemplary cost even for making submission which he was fully entitled to do.

E. Because this Hon'ble Court gravely erred in penalising the writ petitioner by imposing such a huge cost of Rs. 25 lacs without giving an opportunity of any hearing with regard to imposition of any cost. As submitted earlier, this Hon'ble Court had given a patient hearing to the Petitioner's counsel and at no point of time, it was indicated that even advancement of any submission for admission of the writ petition itself will make the Petitioner liable for such a huge cost. It is respectfully submitted that it is a settled law that no one can be penalized without affording an opportunity to the person to explain why such penalty should not be imposed on him. In the present case, no such opportunity was afforded to the Petitioner. Thus, the direction to impose cost of Rs. 25 lakhs is in violation of principle of natural justice and also in violation of Rule of Law. Moreover, this Hon'ble Court while dismissing the similar petition filed by Ms. Kamini Jaiswal, despite making strong observations, did not impose such penalty. Therefore, the Petitioner had no reason to believe that mere filing of the present petition would attract cost. The singling out of the Petitioner to impose punitive costs is prima facie discriminatory and unsustainable in law.

F. Because this Hon'ble Court further made an error in imposing exemplary cost of Rs. 25 lakhs on the Petitioner on the ground, inter alia, that the Writ Petition was wholly *contemptuous and aimed at scandalizing the highest judicial institution in the country without any reasonable basis*. If the Petitioner is to be punished under the garb of having committed contempt of court, the procedure established by law requires that a charge be framed, and the Petitioner be allowed to answer to the charge and avail of defenses available to him in law, including the defense of truth / justification and public interest. No such

procedure was followed, and no opportunity was afforded to the Petitioner to adduce proof in support of its allegedly contemptuous averments. The principle of natural justice, *audi alteram partem*, the right to be heard before any adverse order is passed against a person, was not followed in deciding on imposition of exemplary costs of Rs. 25 lakhs on the petitioner without notice having been issued prior to such decision.

G. Because this Hon'ble Court did not appreciate that propriety demands that none of the judges, who has been part of the bench hearing the said medical college case, which is the subject matter of the investigation, should have been part of the bench hearing the present writ petition. It is submitted that when the Petitioner prays for recusal of any judge from hearing the petition, it is not trying to suggest in any manner that the said judge had been party to the alleged conspiracy to influence the outcome of the pending matter nor does it doubt the integrity and impartiality of the said judge. It is the basic principle of law that justice should not only be done, but seen to be done. Further, the legal principle of jurisprudence, *nemo iudex in causa sua* is founded on the principle that *no person shall be a judge in his own cause*. It is not the Petitioner's case that any of the sitting judges has been named in the said FIR which disqualifies him from hearing the present writ petition. Instead, it is the subject matter of the investigation, namely the case related to a medical college, which makes the case for recusal of a judge, who was part of the bench hearing the said matter. The legal jurisprudence evolved so far through catena of cases by this Hon'ble Court like *Ranjit Thakur v. Union of India*, (1987) 4 SCC 611 and *Inderpreet Singh Kahlon v. State of Punjab*, (2006) 11 SCC 356 and also by the English Court like *Pinochet, In re* [1999] UKHL 1; [2000] 1 AC 119; [1999] 1 All ER

577; [1999] 2 WLR 272 requires that a Judge should be indifferent to the subject matter of the controversy and the test is not what the judge thinks about his/her bias but whether there is reasonable apprehension of bias in the mind of the party.

This Hon'ble Court in the case of *Ranjit Thakur v. Union of India*, (1987) 4 SCC 611 has observed and held as under:

“15.The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and is whether Respondent 4 was likely to be disposed to decide the matter only in a particular way.....”

17. As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, “Am I biased?”; but to look at the mind of the party before him.

18. Lord Esher in Allinson v. General Council of Medical Education and Registration said: “The question is not, whether in fact he was or was not biased. The court cannot inquire into that. . . .In the administration of justice, whether by a recognised legal court or by persons who, although not a legal public court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the administration, any person who is to take part in it should not be in such a position that he might be suspected of being biased.”

19. In Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon Lord Denning M.R. observed: “. . . in considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the

chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if right-minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit.”

20. *Frankfurter, J. in Public Utilities Commission of the District of Columbia v. Pollak said:*

“The judicial process demands that a Judge move within the framework of relevant legal rules and the covenanted modes of thought for ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case. There is a good deal of shallow talk that the judicial robe does not change the man within it. It does. The fact is that on the whole Judges do lay aside private views in discharging their judicial functions. This is achieved through training, professional habits, self-discipline and that fortunate alchemy by which men are loyal to the obligation with which they are entrusted. But it is also true that reason cannot control the subconscious influence of feelings of which it is unaware. When there is ground for believing that such unconscious feelings may operate in the ultimate judgment, or may not unfairly lead others to believe they are operating, Judges recuse themselves. They do not sit in judgment.”

21. *Referring to the proper test, Ackner, L.J. in Regina v. Liverpool City Justices, ex parte Topping said: “Assuming, therefore, that the magistrates had applied the test advised*

by Mr Pearson: ‘Do I feel prejudiced?’ then they would have applied the wrong test, exercised their discretion on the wrong principle and the same result, namely, the quashing of the conviction, would follow.”

In *Pinochet, In re* [1999] UKHL 1; [2000] 1 AC 119; [1999] 1 All ER 577; [1999] 2 WLR 272, the House of Lords in appeal held,

“The fundamental principle is that a man may not be a Judge in his own cause...In such a case, once it is shown that the Judge is himself a party to the cause, or has a relevant interest in its subject-matter, he is disqualified without any investigation into whether there was a likelihood or suspicion of bias. The mere fact of his interest is sufficient to disqualify him unless he has made sufficient disclosure....”.

6. The Petitioner craves leave to add to or alter the grounds set out above, at a later stage, if so advised.

7. The Petitioner submits that the Judgement under Review passed on 1.12.2017 suffers from errors apparent on the face of the record in the sense that a number of crucial facts borne out by documents on record and which have a significant bearing on the present matter were construed incorrectly. As set out above, a severe miscarriage of justice will result from the Judgement under Review as it currently stands.

8. The Petitioner submits that it has no other alternative and efficacious remedy than to petition this Hon’ble Court under Article 137 of the Constitution of India and Order 47 of The Supreme Court Rules.

9. The Petitioner states that he has not filed any other review petition, application or appeal in the Hon'ble Supreme Court or in any other Courts with regards to the subject matter of the present petition.

10. That this review petition has been filed bonafide for securing the ends of justice.

PRAYER:

In the aforesaid premises, the Petitioner humbly pray that this Hon'ble Court may graciously be pleased to:

- a) allow this Review Petition against the judgment /order of this Hon'ble Court dated 1.12.2017 in Criminal Writ Petition No. 169 of 2017;
- b) Pass such further or other orders as this Hon'ble Court may deem fit and proper, in the interest of justice.

REVIEW PETITIONER

THROUGH: PRASHANT BHUSHAN
COUNSEL FOR THE REVIEW PETITIONER

ADVOCATE FOR THE PETITIONER

Drawn on: 2nd January 2018

Filed on: 4th January 2018