CASE NO.:
Appeal (civil) 7256-57 of 2004

PETITIONER:
Madhya Pradesh Special Police Establishment

RESPONDENT:
State of Madhya Pradesh & Ors.

DATE OF JUDGMENT: 05/11/2004

BENCH:
N.SANTOSH HEGDE & S.N.VARIAVA & BISHESHWAR P.SINGH & HOTOI KHETOHO SEMA & S.B.SINHA

JUDGMENT:
JUDGMENT

[Arising out of SLP (C) Nos. 7697-7698 of 2003]

DELIVERED BY:
S.N.VARIAVA, (J)

S. N. VARIAVA, J.

Leave granted.

These Appeals are against the Judgment of the Madhya Pradesh High Court dated 10th January, 2003.

Briefly stated the facts are as follows:

Respondents No. 4 (in both these Appeals), i.e. Rajender Kumar Singh and Bisahu Ram Yadav, were Ministers in the Government of M. P. A Complaint was made to the Lokayukta against them for having released 7.5 acres of land illegally to its earlier owners even though the same had been acquired by the Indore Development Authority. After investigation the Lokayukta submitted a report holding that there were sufficient grounds for prosecuting the two Ministers under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1983 and also for the offences of criminal conspiracy punishable under Section 120-B of the Indian Penal Code. It must be mentioned that by the time the report was given the two Ministers had already resigned.

Sanction was applied for from the Council of Ministers for prosecuting the two Ministers. The Council of Ministers held that there was not an iota of material available against both the Ministers from which it could be inferred that they had entered into a criminal conspiracy with anyone. The Council of Ministers thus refused sanction on the ground that no prima-facie case had been made out against them.

The Governor then considered grant of sanction keeping in view the decision of the Council of Ministers. The Governor opined that the available documents and the evidence was enough to show that a prima-facie case for prosecution had been made out. The Governor accordingly granted sanction for prosecution under Section 197 of the Criminal Procedure Code.

Both the Ministers filed separate Writ Petitions under Articles 226 and 227 of the Constitution of India assailing the Order of the Governor. A Single Judge of the High Court held that granting sanction for prosecuting the Ministers was not a function which could be exercised by the Governor "in his discretion" within the meaning of these words as used in Article 163 of the Constitution of India. It was

held that the Governor could not act contrary to the "aid and advice" of the Council of Ministers. It was further held that the doctrine of bias could not be applied against the entire Council of Ministers and that the doctrine of necessity could not be invoked on the facts of the case to enable the Governor to act in his discretion.

The Appellants filed two Letters Patent Appeals which have been disposed off by the impugned Judgment. The Division Bench dismissed the Letters Patent Appeals upholding the reasoning and Judgment of the Single Judge. It must be mentioned that the authority of this Court in the case of State of Maharashtra vs. Ramdas Shrinivas Nayak reported in 1982 (2) SCC 463 was placed before the Division Bench. The Division Bench, however, held that the observations made therein may apply to the case of a Chief Minister but they could not be stretched to include cases of Ministers.

The question for consideration is whether a Governor can act in his discretion and against the aid and advice of the Council of Ministers in a matter of grant of sanction for prosecution of Ministers for offences under the Prevention of Corruption Act and/or under the Indian Penal Code.

As this question is important, by Order dated 12th September, 2003 it has been directed that these Appeals be placed before a Bench of five Judges. Accordingly these Appeals are before this Bench.

Article 163 of the Constitution of India reads as follows:

"163. COUNCIL OF MINISTERS TO AID AND ADVISE GOVERNOR.- (1) There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court."

Mr. Sorabjee submits that even though normally the Governor acts on the aid and advice of the Council of Ministers, but there can be cases where the Governor is by or under the Constitution required to exercise his function or any of them in his discretion. The Constitution of India expressly provides for contingencies/cases where the Governor is to act in his discretion. Articles 239(2), 371A(1)(b), 371A(2)(b), 371A(2)(f) and Paragraphs 9(2) and 18(3) of the Sixth Schedule are some of the provisions. However, merely because the Constitution of India expressly provides, in some cases, for the Governor to act in his discretion, can it be inferred that the Governor can so act only where the Constitution expressly so provides. If that were so then Sub-clause (2) of Article 163 would be redundant. A question whether a matter is or is not a matter in which the Governor is required to act in his discretion can only arise in cases where the Constitution has not expressly provided that the Governor can act in his discretion. Such a question cannot arise in respect of a matter where the Constitution expressly provides that the Governor is to act in his discretion. Article 163(2), therefore, postulates that there can be matters where the Governor can act in his discretion even though the Constitution has not expressly so provided.

Mr. Sorabjee relies on the case of Samsher Singh vs. State of Punjab, reported in 1974 (2) SCC 831. A seven Judges' Bench of this Court, inter alia, considered whether the Governor could act by personally applying his mind and/or whether, under all circumstances, he must act only on the aid and advice of the Council of Ministers. It

was inter alia held as follows:

"54. The provisions of the Constitution which expressly require the Governor to exercise his powers in his discretion are contained in articles to which reference has been made. To illustrate, Article 239(2) states that where a Governor is appointed an administrator of an adjoining Union territory he shall exercise his functions as such administrator independently of his Council of Ministers. The other articles which speak of the discretion of the Governor are paragraphs 9(2) and 18(3) of the Sixth Schedule and Articles 371A(1)(b), 371A(1)(d) and 371A(2)(b) and 371A(2)(f). The discretion conferred on the Governor means that as the constitutional or formal head of the State the power is vested in him. In this connection, reference may be made to Article 356 which states that the Governor can send a report to the President that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution. Again Article 200 requires the Governor to reserve for consideration any Bill which in his opinion if it became law, would so derogate from the powers of the High Court as to endanger the position which the High Court is designed to fill under the Constitution.

55. In making a report under Article 356 the Governor will be justified in exercising his discretion even against the aid and advice of his Council of Ministers. The reason is that the failure of the constitutional machinery may be because of the conduct of the Council of Ministers. This discretionary power is given to the Governor to enable him to report to the President who, however, must act on the advice of his Council of Ministers in all matters. In this context Article 163(2) is explicable that the decision of the Governor in his discretion shall be final and the validity shall not be called in question. The action taken by the President on such a report is a different matter. The President acts on the advice of his Council of Ministers. In all other matters where the Governor acts in his discretion he will act in harmony with his Council of Ministers. The Constitution does not aim at providing a parallel administration within the State by allowing the Governor to go against the advice of the Council of Ministers.

56. Similarly Article 200 indicates another instance where the Governor may act irrespective of any advice from the Council of Ministers. In such matters where the Governor is to exercise his discretion he must discharge his duties to the best of his judgment. The Governor is required to pursue such courses which are not detrimental to the State."

The law, however, was declared in the following terms:

"154. We declare the law of this branch of our Constitution to be that the President and Governor, custodians of all executive and other powers under various articles shall, by virtue of these provisions, exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers save in a few well-known exceptional situations. Without being dogmatic or exhaustive, these situations relate to (a) the choice of Prime Minister (Chief Minister), restricted though this choice is by the paramount consideration that he should command a majority in the House, (b) the dismissal of a Government which has lost its majority in the House; but refuses to quit office; (c) the dissolution of the House where an appeal to the country is necessitous, although in this area the head of State should avoid getting involved in

politics and must be advised by his Prime Minister (Chief Minister) who will eventually take the responsibility for the step. We do not examine in detail the constitutional proprieties in these predicaments except to utter the caution that even here the action must be compelled by the peril to democracy and the appeal to the House or to the country must become blatantly obligatory. We have no doubt that de Smith's statement (Constitutional and Administrative law \026 by S. A. de Smith \026 Penguin Books on Foundations of law), regarding royal assent holds good for the President and Governor in India:

"Refusal of the royal assent on the ground that the Monarch strongly disapproved of a Bill or that it was intensely controversial would nevertheless be unconstitutional. The only circumstances in which the withholding of the royal assent might be justifiable would be if the Government itself were to advise such a course \026 a highly improbable contingency \026 or possibly if it was notorious that a Bill had been passed in disregard to mandatory procedural requirements; but since the Government in the latter situation would be of the opinion that the deviation would not affect the validity of the measure once it had been assented to, prudence would suggest the giving of assent"."

Thus, as rightly pointed out by Mr. Sorabjee, a seven Judges' Bench of this Court has already held that the normal rule is that the Governor acts on the aid and advice of the Council of Ministers and not independently or contrary to it. But there are exceptions under which the Governor can act in his own discretion. Some of the exceptions are as set out hereinabove. It is however clarified that the exceptions mentioned in the Judgment are not exhaustive. It is also recognized that the concept of the Governor acting in his discretion or exercising independent judgment is not alien to the Constitution. It is recognized that there may be situations where by reason of peril to democracy or democratic principles an action may be compelled which from its nature is not amendable to Ministerial advice. Such a situation may be where bias is inherent and/or manifest in the advice of the Council of Ministers.

Mr. Sorabjee also points out that this Court in the case of Ramdas Shrinivas Nayak (supra) has carved out a further exception. In this case, an MLA filed a complaint against the then Chief Minister of Maharashtra in the Court of Metropolitan Magistrate, 28th Court, Esplanade, Bombay, charging the Chief Minister with commission of offences punishable under Sections 161 and 185 of the Indian Penal Code and Section 5 of the Prevention of Corruption Act. The Metropolitan Magistrate refused to entertain the complaint without requisite sanction of the Government under Section 6 of the Prevention of Corruption Act. Against the Order of the Metropolitan Magistrate, R.S. Nayak filed a Criminal Revision Application in the High Court of Bombay wherein the State of Maharashtra and Shri Antulay were impleaded as Respondents. During the pendency of this Criminal Revision Application, Shri Antulay resigned as the Chief Minister of the State of Maharashtra. A Division Bench of the Bombay High Court dismissed the Revision Application, but whilst dismissing the application it was recorded by Gadgil, J. as follows:

"However, I may observe at this juncture itself that at one stage it was expressly submitted by the learned counsel on behalf of the respondents that in case if it is felt that bias is well apparently inherent in the proposed action of the concerned Ministry, then in such a case situation notwithstanding the other Ministers not being joined in the arena of the prospective accused, it would be a justified ground for the Governor to act on his own, independently and without any reference to any Ministry, to decide that

question."

Kotwal, J. in his concurring judgment observed:

"..... At one stage it was unequivocally submitted by the learned counsel on behalf of the respondents in no uncertain terms that even in this case notwithstanding there being no accusation against the Law Minister as such if the court feels that in the nature of things a bias in favour of the respondents and against a complainant would be manifestly inherent, apparent and implied in the mind of the Law Minister, then in that event, he would not be entitled to consider complainant's application and on the equal footing even the other Ministers may not be qualified to do so and the learned counsel further expressly submitted that in such an event, it would only the Governor, who on his own, independently, will be entitled to consider that question."

The State of Maharashtra sought Special Leave to Appeal to this Court, under Article 136 of the Constitution of India, against that portion of the Judgment which directed the Governor of Maharashtra to exercise his individual discretion. Before this Court it was argued that the High Court could not have decided that the Governor should act in his individual discretion and without the aid and advice of the Council of Ministers. It was submitted that under Article 163(2) if a question arose whether any matter was or was not one in which the Governor was required to act in his discretion, it was the decision of the Governor which was to be final. It was also submitted that under Article 163(3) any advice tendered by the Council of Ministers to the Governor could not be inquired into by the Court. This Court noticed that an express concession had been made in the High Court to the effect that in circumstances like this bias may be apparently inherent and thus it would be a justified ground for the Governor to decide on his own, independently and without any reference to any Ministry. Before this Court it was sought to be contended that no such concession had been made out. This Court held that public policy and judicial decorum required that this Court does not launch into an enquiry whether any such concession was made. It was held that matters of judicial records are unquestionable and not open to doubt. It was held that this Court was bound to accept the statement of the Judges recorded in their Judgment, as to what transpired in Court. This Court then went on to hold as follows:

"10. We may add, there is nothing before us to think that any such mistake occurred, nor is there any ground taken in the petition for grant of special leave that the learned Judges proceeded on a mistaken view that the learned counsel had made a concession that there might arise circumstances, under which the Governor in granting sanction to prosecute a minister must act in his own discretion and not on the advice of the Council of Ministers. The statement in the judgment that such a concession was made in conclusive and, if we may say so, the concession was rightly made. In the facts and circumstances of the present case, we have no doubt in our mind that when there is to be a prosecution of the Chief Minister, the Governor would, while determining whether sanction for such prosecution should be granted or not under Section 6 of the Prevention of Corruption Act, as a matter of propriety, necessarily act in his own discretion and not on the advice of the Council of Ministers.

11. The question then is whether we should permit the State of Maharashtra to resile from the concession made before the High Court and raise before us the contention now advanced by the learned Attorney-General.

We have not the slightest doubt that the cause of justice would in no way be advanced by permitting the State of Maharashtra to now resile from the concession and agitate the question posed by the learned Attorney-General. On the other hand we are satisfied that the concession was made to advance the cause of justice as it was rightly thought that in deciding to sanction or not to sanction the prosecution of a Chief Minister, the Governor would act in the exercise of his discretion and not with the aid and advice of the Council of Ministers. The application for grant of special leave is, therefore, dismissed." (Emphasis supplied)

As has been mentioned above, the Division Bench had noted this case. The Division Bench however held that even though this principle may apply to the case of a Chief Minister it cannot apply to a case where Ministers are sought to be prosecuted. We are unable to appreciate the subtle distinction sought to be made by the Division Bench. The question in such cases would not be whether they would be bias. The question would be whether there is reasonable ground for believing that there is likelihood of apparent bias. Actual bias only would lead to automatic disqualification where the decision-maker is shown to have an interest in the outcome of the case. The principle of real likelihood of bias has now taken a tilt to 'real danger of bias' and 'suspicion of bias'. [See Kumaon Mandal Vikas Ninag Ltd. vs. Girja Shankar Pant and Others reported in (2000) 1 SCC 182 paras 27, 33 and 35 and Judicial Review of Administrative Action, by de Smith, Woolf and Jowell (5th Edn. at p.527) where two different spectrums of the doctrine have been considered].

Another exception to the aforementioned general rule was noticed in Bhuri Nath and Others etc. vs. State of Jammu & Kashmir and Others reported in (1997) 2 SCC 745, where the Governor was to chair the Board in terms of the Jammu and Kashmir Shri Mata Vaishno Devi Shrine Act, 1988 on the premise that in terms of the statute he is required to exercise his ex officio power as Governor to oversee personally the administration, management and governance of the Shrine. It was observed that the decision taken by him would be his own on his personal satisfaction and not on the aid and advice of the Council of Ministers opining:

"... The exercise of powers and functions under the Act is distinct and different from those exercised formally in his name for which responsibility rests only with his Council of Ministers headed by the Chief Ministers."

In the case of A. K. Kraipak vs. Union of India reported in 1969 (2) SCC 262, the question was whether a selection made by the Selection Board could be upheld. It was noticed that one of the candidates for selection had become a member of the Selection Board. A Constitution Bench of this Court considered the question of bias in such situations. This Court held as follows:

"15. It is unfortunate that Naqishbund was appointed as one of the members of the selection board. It is true that ordinarily the Chief Conservator of Forests in a State should be considered as the most appropriate person to be in the selection board. He must be expected to know his officers thoroughly, their weaknesses as well as their strength. His opinion as regards their suitability for selection to the All India Service is entitled to great weight. But then under the circumstances it was improper to have included Naqishbund as a member of the selection board. He was one of the persons to be considered for selection. It is against all canons of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member

of the selection board must have had its own impact on the decision of the selection board. Further admittedly he participated in the deliberations of the selection board when the claims of his rivals particularly that of Basu was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney-General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. It was in the interest of Naqishbund to keep out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position while preparing the list of selected candidates.

16. The members of the selection board other than Naqishbund, each one of them separately, have filed affidavits in this Court swearing that Naqishbund in no manner influenced their decision in making the selections. In a group deliberation each member of the group is bound to influence the others, more so, if the member concerned is a person with special knowledge. His bias is likely to operate in a subtle manner. It is no wonder that the other members of the selection board are unaware of the extent to which his opinion influenced their conclusions. We are unable to accept the contention that in adjudging the suitability of the candidates the members of the board did not have any mutual discussion. It is not as if the records spoke of themselves. We are unable to believe that the members of selection board functioned like computers. At this stage it may also be noted that at the time the selections were made, the members of the selection board other than Naqishbund were not likely to have known that Basu had appealed against his supersession and that his appeal was pending before the State Government. Therefore there was no occasion for them to distrust the opinion expressed by Naqishbund. Hence the board in making the selections must necessarily have given weight to the opinion expressed by Naqishbund."

On the basis of the ratio in this case Mr. Sorabjee rightly contends that bias is likely to operate in a subtle manner. Sometime members may not even be unaware of the extent to which their opinion gets influenced.

Again in the case of Kirti Deshmankar vs. Union of India, reported in 1991 (1) SCC 104, the mother-in-law of the selected candidate had participated in the Selection Committee. This Court held that the mother-in-law was vitally interested in the admission of her daughter-in-law and her presence must be held to have vitiated the selection for the admission. It was held that there was a conflict between interest and duty and taking into consideration human probabilities and the ordinary course of human conduct, there was reasonable ground to believe that she was likely to have been biased.

Article 163 has been extracted above. Undoubtedly, in a matter of grant of sanction to prosecute the Governor is normally required to act on aid and advice of the Council of Ministers and not in his discretion. However, an exception may arise whilst considering grant of sanction to prosecute a Chief Minister or a Minister where as a

matter of propriety the Governor may have to act in his own discretion. Similar would be the situation if the Council of Ministers disable itself or disentitles itself.

Mr. Tankha, on behalf of the Ministers, submitted that a case of Chief Minister would be completely different from that of Ministers. He submitted that in this case the Council of Ministers had considered all the materials and had applied their minds and come to the conclusion that sufficient material to grant sanction was not there. He submitted that the Governor was not an Appellate Body and he could not sit in Appeal over the decision of the Council of Ministers. He submitted that the decision of the Council of Ministers could only have been challenged in a Court of Law.

Mr. Tankha submitted that the theory of bias cannot be applied to the facts of this case. In support of his submission, he relied upon the case of V.C. Shukla vs. State (Delhi Administration), reported in (1980) Supp. SCC 249, wherein the vires of the Special Court Act, 1979 had been challenged. Under Section 5 of the Special Court Act, sanction had to be granted by the Central Government. Sub-section (2) of Section 5 provided that the sanction could not be called in question by any Court. It had been submitted that this would enable an element of bias or malice to operate by which the Central Government could prosecute persons who are political opponents. This Court negatived this contention on the ground that the power was vested in a very high authority and therefore it could not be assumed that it was likely to be abused. This Court held that as the power was conferred on a high authority the presumption would be that the power would be exercised in a bonafide manner and according to law. Mr. Tankha also relied upon the case of State of Punjab vs. V.K. Khanna, reported in 2001 (2) SCC 330. In this case, two senior IAS Officers in the State of Punjab were sought to be prosecuted after obtaining approval from the then Chief Minister of Punjab. Thereafter, there was a change in the Government. The new Government cancelled the sanction granted earlier. The question before the Court was whether the action in withdrawing the sanction was fair and correct. This Court held that fairness was synonymous with reasonableness and bias stood included within the attributes and broader purview of the word "malice". This Court held that mere general statements were not sufficient but that there must be cogent evidence available to come to the conclusion that there existed a bias which resulted in a miscarriage of justice. Mr. Tankha also relied upon the case of Kumaon Mandal Vikas Nigal Ltd. vs. Girja Shankar Pant, reported in 2001 (1) SCC 182. In this case, the question was whether the Managing Director had a bias against the Respondent therein. This Court held that mere apprehension of bias was not sufficient but that there must be real danger of bias. It was held that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. It was held that if on facts the conclusion was otherwise inescapable that there existed a real danger of bias, the administrative action could not be sustained. It was held that if, on the other hand, the allegations pertaining to bias are rather fanciful, then the question of declaring them to be unsustainable would not arise.

There can be no dispute with the propositions of law. However, in our view, the above authorities indicate that if the facts and circumstances indicate bias, then the conclusion becomes inescapable.

Mr. Tankha is not right when he submits that the Governor would be sitting in Appeal over the decision of the Council of Ministers. However, as stated above, unless a situation arises as a result whereof the Council of Ministers disables or disentitles itself, the Governor in such matters may not have any role to play. Taking a cue from Antulay, it is possible to contend that a Council of Ministers may not take a fair and impartial decision when his Chief Minister or other members of the Council face prosecution. But the doctrine of 'apparent bias', however, may not be applicable in a case where a collective decision is required to be taken under a statute in relation to

former ministers. In a meeting of the Council of Ministers, each member has his own say. There may be different views or opinions. But in a democracy the opinion of the majority would prevail.

Mr. Soli J. Sorabjee has not placed any material to show as to how the Council of Ministers collectively or the members of the Council individually were in any manner whatsoever biased. There is also no authority for the proposition that a bias can be presumed in such a situation. The real doctrine of likelihood of bias would also not be applicable in such a case. The decision was taken collectively by a responsible body in terms of its constitutional functions. To repeat only in a case of 'apparent bias', the exception to the general rule would apply.

On the same analogy in absence of any material brought on records, it may not be possible to hold that the action on the part of the Council of Ministers was actuated by any malice. So far as plea of malice is concerned, the same must be attributed personally against the person concerned and not collectively. Even in such a case the persons against whom malice on fact is alleged must be impleaded as parties.

However, here arises another question. There are two competing orders; one of the Council of Ministers, another by the Governor, one refusing to grant sanction another granting the same. The Council of Ministers had refused to grant sanction on the premise that there existed no material to show that the Respondent No. 4 in each appeal has committed an offence of conspiracy, whereas the Governor in his order dated 24th September, 1998 was clearly of the view that the materials did disclose their complicity.

A F.I.R. was lodged in relation to the commission of offence on 31st March, 1998.

The Lokayukta for the State of Madhya Pradesh admittedly made a detailed inquiry in the matter on a complaint received by him. The inquiry covered a large area, namely, the statutory provisions, the history of the case, Orders dated 11th August, 1995, 24th February 1997 and 5th March, 1997 which were said to have been passed on the teeth of the statutory provisions, the clandestine manner in which the matter was pursued, the notings in the files as also how the accused persons deliberately and knowingly closed their minds and eyes from the realities of the case. The report of the Lokayukta is itself replete with the materials which led him to arrive at the conclusion which is as under:

"Having gone through the record of the IDA and the State Government and the statements recorded by Shri P.P. Tiwari and the replies of the two Ministers Shri B.R. Yadav and Shri Rajendra Kumar Singh and Shri R.D. Ahirwar the then Additional Secretary, Department of Environment, I have come to the conclusion that this is a fit case in which an offence should be registered. Therefore, in exercise of the powers vested in me u/s 4(1) of the M.P. Special Police Establishment Act, I direct the D.G. (SPE) to register and investigate an offence against Shri B.R. Yadav, Minister, Shri Rajendra Kumar Singh, Minister and Shri R.D. Ahirwar the then Additional Secretary under relevant provisions of the P.C. Act, 1988 and I.P.C. It is also directed that investigation in this case will be done by an officer not below the rank of S.P. The entire record be transferred to the SPE Wing."

The Office of the Lokayukta was held by a former Judge of this Court. It is difficult to assume that the said High Authority would give a report without any material whatsoever. We, however, do not intend to lay down any law in this behalf. Each case may be judged on its own merits. In this case, however, we are satisfied that the Lokayukta made a report upon taking into consideration the materials which were placed or received by him. When the Council of Ministers takes a decision in exercise of its jurisdiction it must act fairly and

reasonably. It must not only act within the four-corners of the statute but also for effectuating the purpose and object for which the statute has been enacted. The Respondent No. 4 in each appeal are to be prosecuted under the Prevention of Corruption Act wherefor no order of sanction is required to be obtained. A sanction was asked for and granted only in relation to an offence under Section 120B of the Indian Penal Code. It is now trite that it may not be possible in a given case even to prove conspiracy by direct evidence. It was for the Court to arrive at the conclusion as regard commission of the offence of conspiracy upon the material placed on records of the case during trial which would include the oral testimonies of the witnesses. Such a relevant consideration apparently was absent in the mind the Council of Ministers when it passed an order refusing to grant sanction. It is now well-settled that refusal to take into consideration a relevant fact or acting on the basis of irrelevant and extraneous factors not germane for the purpose of arriving at the conclusion would vitiate an administrative order. In this case, on the material disclosed by the Report of the Lokayukta it could not have been concluded, at the prima-facie stage, that no case was made out.

It is well-settled that the exercise of administrative power will stand vitiated if there is a manifest error of record or the exercise of power is arbitrary. Similarly, if the power has been exercised on the non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous.

We have, on the premises aforementioned, no hesitation to hold that the decision of the Council of Ministers was ex facie irrational whereas the decision of the Governor was not. In a situation of this nature, the writ court while exercising its jurisdiction under Article 226 of the Constitution of India as also this Court under Articles 136 and 142 of the Constitution of India can pass an appropriate order which would do complete justice to the parties. The High Court unfortunately failed to consider this aspect of the matter.

If, on these facts and circumstances, the Governor cannot act in his own discretion there would be a complete breakdown of the rule of law inasmuch as it would then be open for Governments to refuse sanction in spite of overwhelming material showing that a prima-facie case is made out. If, in cases where prima-facie case is clearly made out, sanction to prosecute high functionaries is refused or withheld democracy itself will be at stake. It would then lead to a situation where people in power may break the law with impunity safe in the knowledge that they will not be prosecuted as the requisite sanction will not be granted.

Mr. Tankha also pressed into play the doctrine of necessity to show that in such cases of necessity it is the Council of Ministers which has to take the decision. In support of this submission he relied upon the cases of J. Mohapatra and Co. vs. State of Orissa reported in 1984 (4) SCC 103; Institute of Chartered Accountants vs. L.K. Ratna reported in 1986 (4) SCC 537; Charan Lal Sahu vs. Union of India reported in 1990 (1) SCC 613; Badrinath vs. Government of Tamil Nadu reported in 2000 (8) SCC 395; Election Commission of India vs. Dr. Subramaniam Swamy reported in 1996 (4) SCC 104; Ramdas Shrinavas Nayak (supra) and State of M. P. vs. Dr. Yashwant Trimbak reported in 1996 (2) SCC 305. In our view, the doctrine of necessity has no application to the facts of this case. Certainly the Council of Ministers has to first consider grant of sanction. We also presume that a high authority like the Council of Ministers will normally act in a bonafide manner, fairly, honestly and in accordance with law. However, on those rare occasions where on facts the bias becomes apparent and/or the decision of Council of Ministers is shown to be irrational and based on non-consideration of relevant factor, the Governor would be right, on the facts of that case, to act in his own discretion and grant sanction.

In this view of the matter appeals are allowed. The decisions of the Single Judge an
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Division Bench cannot be upheld and are accordingly set aside. The

Writ Petitions filed by the two Ministers will stand dismissed. For the reasons aforementioned we direct that the Order of the Governor sanctioning prosecution should be given effect to and that of the Council of Ministers refusing to do so may be set aside. The Court shall now proceed with the prosecution. As the case is very old, we request the Court to dispose off the case as expeditiously as possible.