

**REPORTABLE****IN THE SUPREME COURT OF INDIA****CIVIL ORIGINAL JURISDICTION****WRIT PETITION (CIVIL) NO.1309 OF 2018**

Alok Kumar Verma .... Petitioner(s)

Versus

Union of India & Anr. ...Respondent(s)

WITH

**WRIT PETITION (CIVIL) NO.1315 OF 2018**

[Common Cause Vs. Union of India & Ors.]

**JUDGMENT****RANJAN GOGOI, CJI**

1. That the Rule of law is the bedrock of democracy would hardly require any reiteration. However firmly entrenched the principle may be, it gets tested in a myriad of situations that confronts the courts from time to time. The present is one such occasion.

2. On 23<sup>rd</sup> October, 2018, the Central Vigilance Commission (hereinafter referred to as "CVC") passed an order

divesting Shri Alok Kumar Verma, Director, Central Bureau of Investigation (hereinafter referred to as "CBI") of the powers, functions, duties, supervisory role, etc. vested in him as the Director of the CBI. The exercise of said power by the aforesaid order dated 23<sup>rd</sup> October, 2018, signed by the Central Vigilance Commissioner and two other Vigilance Commissioners holding office, is stated to be under Section 8(1)(a) and 8(1)(b) of the Central Vigilance Commission Act, 2003 (hereinafter referred to as "the CVC Act") read with Section 4(1) of the Delhi Special Police Establishment Act, 1946 (hereinafter referred to as "DSPE Act"). The divestment of Shri Alok Kumar Verma, Director, CBI of his functions, powers, duties and supervisory role, specifically, is in respect of all cases already registered and/or required to be registered and/or being inquired/enquired/investigated under the Prevention of Corruption Act, 1988 (hereinafter referred to as "PC Act").

3. The aforesaid order is stated to be in the nature of an interim measure till completion of an inquiry into the allegations contained in a complaint dated 24<sup>th</sup> August, 2018

submitted/forwarded by the Cabinet Secretary by letter dated 31<sup>st</sup> August, 2018 to the CVC.

4. The said order dated 23<sup>rd</sup> October, 2018 of the CVC was followed by an order of the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training of the same date i.e. 23<sup>rd</sup> October, 2018 divesting Shri Alok Kumar Verma, Director, CBI of his functions, powers, duties and supervisory role in any manner as the Director, CBI with immediate effect and until further orders.

5. There is yet another order of the same date i.e. 23<sup>rd</sup> October, 2018 of the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training by which one Shri M. Nageshwar Rao, IPS, Joint Director, CBI has been asked to look after the duties and functions of Director, CBI with immediate effect.

6. The legality and validity of the aforesaid three orders is the subject matter of challenge in Writ Petition (Civil) No.1309 of 2018 filed by Shri Alok Kumar Verma as well as in Writ Petition (Civil) No.1315 of 2018 filed by Common Cause which claims to

be a registered society established/founded in the year 1980 by one late Shri H.D. Shourie for the purposes of “ventilating the common problems of the people and securing their resolution”.

7. In addition to interference with the aforesaid three orders, in the writ petition filed by Common Cause, further prayers have been made, *inter alia*, seeking removal of one Mr. Rakesh Asthana, Special Director, CBI (respondent no.4 in Writ Petition (Civil) No.1315 of 2018) from the CBI and for constituting a Special Investigating Team (“SIT” for short) to go into the charges of corruption against the officials of the CBI and also the FIR lodged against Mr. Rakesh Asthana, Special Director, CBI, details of which are mentioned in the writ petition filed by Common Cause.

8. The order of the CVC dated 23<sup>rd</sup> October, 2018 is fairly long and elaborate. What is essentially stated therein is that a complaint dated 24<sup>th</sup> August, 2018 was forwarded to the CVC by the Cabinet Secretary by letter dated 31<sup>st</sup> August, 2018 which, *prima facie*, revealed charges of corruption against the Director, CBI, Shri Alok Kumar Verma. The CVC considered it worthwhile to take note of the contents thereof and had sought the

explanation/comments of the Director, CBI along with the relevant record(s). According to the CVC, instead of cooperating in the matter, the Director, CBI had sought information as to the identity of the person who had complained to the Cabinet Secretary in that regard and had gone to the extent of bringing specific allegations against the Special Director, CBI Shri Rakesh Asthana. Details of several cases of corruption wherein the Special Director, CBI was alleged to be involved were also brought to the notice of the CVC by Shri Alok Kumar Verma.

9. In the order of the CVC dated 23<sup>rd</sup> October, 2018 it is further recorded that Shri Rakesh Asthana, Special Director, CBI had also made serious allegations against Shri Alok Kumar Verma, Director, CBI and that, in fact, on 15<sup>th</sup> October, 2018, the CBI had registered RC 13A of 2018 of AC III, New Delhi under Section 7 and 13(2) read with 13(1)(d) and Section 7A of the PC Act as amended in 2018 against Shri Asthana. The said RC case was stated to have been registered on the complaint of one Satish Babu Sana who is an accused in a case investigated by Special Director, CBI. At the same time, the CVC also took note of the fact that Mr. Rakesh Asthana, Special Director, CBI had recorded

information received from various sources that huge amounts of bribe were given to the Director, CBI to avoid taking any action against Satish Babu Sana.

10. It is in these circumstances, which may be in the least be termed as unfortunate, that the CVC had thought it proper to invoke its powers under Sections 8(1)(a), 8(1)(d) and 11 of the CVC Act to pass the impugned order dated 23<sup>rd</sup> October, 2018 divesting the Director, CBI of his powers, functions, duties, etc., details of which have already been noted.

11. The two further orders of the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training of the same date i.e. 23<sup>rd</sup> October, 2018 were consequential to the order passed by the CVC, as stated above.

12. As already seen, it is the legality, validity and correctness of the aforesaid orders and the action spelt out therein that has been challenged before us in the two writ petitions as well as in the Interlocutory Applications filed by various applicants, details of which will be noted in due course.

13. It is at the very threshold of the present discourse that a brief history of the organization called the CBI may be recalled.

The police force in the country was initially governed by the Police Act, 1861. Section 3 of the said Act had made the following provision :

“3. Superintendence in the State Government.-

The superintendence of the police throughout a general police-district shall vest in and shall be exercised by the State Government to which such district is subordinate; and except as authorized under the provisions of this Act, no person, officer, or Court shall be empowered by the State Government to supersede, or control any police functionary.”

14. The DSPE Act was enacted in the year 1946 to carve out an exception to the Police Act, 1861. The same is evident from Section 2(1) which is in the following terms:

“2. Constitution and powers of police establishment.

(1) Notwithstanding anything in the Police Act, 1861 (5 of 1861) the Central Government may constitute a special police force to be called the Delhi Special Police Establishment for the investigation in any Union Territory of offences notified under Section 3.

15. Initially the administration of the Delhi Special Police Establishment was governed by the provisions of Section 4 of the DSPE Act which contemplated the following:

“4. Superintendence and administration of SPE-

(1) The superintendence of the Delhi Special Police Establishment shall vest in the Central Government.

(2) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector General of Police in respect of the police force in a State, as the Central Government may specify in this behalf.”

16. It is the Delhi Special Police Establishment brought into existence by DSPE Act, 1946 which today is known as the CBI. The origin of the organization has been succinctly traced by this Court in **Vineet Narain and others** vs. **Union of India and another**<sup>1</sup> and the relevant details are available in paragraphs 30 and 31 of the report of this Court in **Vineet Narain** (supra).

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1 (1998) 1 SCC 226



Shortly put and as already observed, investigation of anti-corruption cases; economic offences and ordinary crimes of special importance have come to be vested in the CBI which exercises its jurisdiction in the territory of all States and Union Territories (with consent of the State Governments).

17. The organization i.e. CBI has grown over the years in its role, power and importance and today has become the premier investigative and prosecution agency of the country. The high stature and the pre-eminent position that the institution has acquired is largely on account of a strong perception of the necessity of having such a premier agency. Such a perception finds reflection in the conscious attempts of the Government of the day to introduce reforms, from time to time, so as to enable the institution to reach greater heights in terms of integrity, independence and confidence. A close look at such attempts will now be in order.

18. In **Vineet Narain** (supra) such developments have already been taken note of in detail. The recommendations of the Committee headed by Shri N.N. Vohra constituted by Government Order No. S/7937/SS(ISP)/93 dated 9<sup>th</sup> July, 1993

and those of the Independent Review Committee (IRC) constituted by Government Order No. 226/2/97-AVD-II dated 8<sup>th</sup> September, 1997 has had a major role to play in giving the CBI and the CVC their present shape and form and the pivotal role and position that these two bodies have come to occupy in the system of law enforcement in the country. Incidentally, the CVC had been in existence as an administrative body on being established by Resolution No.24/7/64-AVD dated 11<sup>th</sup> February, 1964 issued by the Central Government until conferment of statutory status by the CVC Act, 2003 on the basis of recommendations of the IRC, summary of which with regard to the CBI and CVC may now be taken note of.

### “SUMMARY OF RECOMMENDATIONS

#### I. *CBI and CVC*

1. CVC to be conferred statutory status; appointment of Central Vigilance Commissioner to be made under the hand and seal of the President (para 4.2)
2. Constitution of a Committee for selection of CVC (para 4.3)
3. CVC to overview CBI's functioning (para 5)
4. CBI's reporting to Government to be streamlined without diluting its functional autonomy (para 3.3)

5. CVC to have a separate section in its Annual Report on the CBI's functioning after the supervisory function is transferred to it (para 6)

6. Constitution of a Selection Committee for identifying a panel of names for selection of Director CBI; final selection to be made by ACC from such panel (para 8.2)

7. Central Government to pursue with the State Governments to set up credible mechanism for selection of Police Chief (para 8.3)

8. Director CBI to have a minimum tenure of 2 years (para 8.4)

9. Transfer of incumbent Director CBI would need endorsement of the Selection Committee (para 8.5)

10. Director CBI to ensure full freedom for allocation of work within the Agency, including constitution of investigation teams (para 8.6)

11. Selection/extension of tenure of officers up to the level of Joint Director (JD) to be decided by a Board under Central Vigilance Commissioner; JD and above would need the approval of ACC (para 8.7)

12. Change in the existing Tenure Rules not recommended (para 8.8)

13. Proposals for improvement of infrastructure, methods of investigation, etc., to be decided urgently (para 8.9.2)

14. No need for creation of a permanent core group in the CBI (para 8.9.3)

15. Severe disciplinary action against officers who deviate from prescribed investigation procedures (para 9.1)

16. Director CBI to be responsible for ensuring time-limits for filing charge-sheets in courts (para 9.2)

17. Document on CBI's functioning to be published within three months (para 9.4)

18. Essential to protect officers at the decision-making levels from vexatious enquiries/prosecutions (para 10.6)

19. Secretaries to adhere strictly to prescribed time-frames for grant of permission for registration of PE/RC. CBI to be free to proceed if decision not conveyed within the specified time (para 10.9)

20. Secretary of Administrative Ministry to convey a decision regarding registration of PE/RC within 2 months of receipt of request. If not satisfied with decision, Director CBI free to make fresh reference to the Committee headed by Cabinet Secretary within a period of four weeks and the latter to decide thereon within a period of four weeks (para 10.10)

21. Protection under the Single Directive not to cover offences like bribery, when prima facie established in a successful trap (para 10.12)

22. Cases of disproportionate assets of Central Government and All India Services Officers to be brought within the ambit of the Single Directive (para 10.13)

23. Time-limit of 3 months for sanction for prosecution. Where consultation is required with the Attorney General or the Solicitor General, additional time of one month could be allowed (paras 10.14 and 10.15)

24. Government to undertake a review of the various types of offences notified for investigation by the CBI to retain focus on anti-corruption activities which is its primary objective (para 11.1)

25. Cases falling within the jurisdiction of the State Police which do not have inter-State or international ramifications should not be handed over to CBI by States/courts (para 11.2)

26. Government to establish Special Courts for the trial of CBI cases (11.3)

27. Severe action against officials found guilty of high-handedness; prompt action against those officials chastised by the courts (para 11.4)

28. Director CBI to conduct regular appraisal of personnel to weed out the corrupt and inefficient, and maintain strict discipline within the organization (para 11.5)”

19. In paragraph 58 of the report of this Court in **Vineet Narain** (supra) directions under Article 142 of the Constitution of

India which were to hold the field till such time that the necessary statutory enactments are brought into force, came to be issued by this Court. Paragraph 58 of the report of this Court in **Vineet Narain** (supra) insofar as CVC and CBI are concerned is in the following terms:

**“58.** As a result of the aforesaid discussion, we hereby direct as under:

I. CENTRAL BUREAU OF INVESTIGATION (CBI)  
AND CENTRAL VIGILANCE COMMISSION (CVC)

1. The Central Vigilance Commission (CVC) shall be given statutory status.

2. Selection for the post of Central Vigilance Commissioner shall be made by a Committee comprising the Prime Minister, Home Minister and the Leader of the Opposition from a panel of outstanding civil servants and others with impeccable integrity, to be furnished by the Cabinet Secretary. The appointment shall be made by the President on the basis of the recommendations made by the Committee. This shall be done immediately.

3. The CVC shall be responsible for the efficient functioning of the CBI. While Government shall remain answerable for the CBI's functioning, to introduce visible objectivity in the mechanism to be established for overseeing the CBI's working, the CVC shall be entrusted with the responsibility of superintendence over the CBI's functioning. The CBI shall report to the CVC

about cases taken up by it for investigation; progress of investigations; cases in which charge-sheets are filed and their progress. The CVC shall review the progress of all cases moved by the CBI for sanction of prosecution of public servants which are pending with the competent authorities, specially those in which sanction has been delayed or refused.

4. The Central Government shall take all measures necessary to ensure that the CBI functions effectively and efficiently and is viewed as a non-partisan agency.

5. The CVC shall have a separate section in its Annual Report on the CBI's functioning after the supervisory function is transferred to it.

6. Recommendations for appointment of the Director, CBI shall be made by a Committee headed by the Central Vigilance Commissioner with the Home Secretary and Secretary (Personnel) as members. The views of the incumbent Director shall be considered by the Committee for making the best choice. The Committee shall draw up a panel of IPS officers on the basis of their seniority, integrity, experience in investigation and anti-corruption work. The final selection shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee. If none among the panel is found suitable, the reasons thereof shall be recorded and the Committee asked to draw up a fresh panel.

7. The Director, CBI shall have a minimum tenure of two years, regardless of the date of his superannuation. This would ensure that an officer suitable in all respects is not ignored

merely because he has less than two years to superannuate from the date of his appointment.

8. The transfer of an incumbent Director, CBI in an extraordinary situation, including the need for him to take up a more important assignment, should have the approval of the Selection Committee.

9. The Director, CBI shall have full freedom for allocation of work within the agency as also for constituting teams for investigations. Any change made by the Director, CBI in the Head of an investigative team should be for cogent reasons and for improvement in investigation, the reasons being recorded.

10. Selection/extension of tenure of officers up to the level of Joint Director (JD) shall be decided by a Board comprising the Central Vigilance Commissioner, Home Secretary and Secretary (Personnel) with the Director, CBI providing the necessary inputs. The extension of tenure or premature repatriation of officers up to the level of Joint Director shall be with final approval of this Board. Only cases pertaining to the appointment or extension of tenure of officers of the rank of Joint Director or above shall be referred to the Appointments Committee of the Cabinet (ACC) for decision.

11. Proposals for improvement of infrastructure, methods of investigation, etc. should be decided urgently. In order to strengthen CBI's in-house expertise, professionals from the Revenue, Banking and Security sectors should be inducted into the CBI.



12. The CBI Manual based on statutory provisions of the CrPC provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned.

13. The Director, CBI shall be responsible for ensuring the filing of charge-sheets in courts within the stipulated time-limits, and the matter should be kept under constant review by the Director, CBI.

14. A document on CBI's functioning should be published within three months to provide the general public with a feedback on investigations and information for redress of genuine grievances in a manner which does not compromise with the operational requirements of the CBI.

15. Time-limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office.

16. The Director, CBI should conduct regular appraisal of personnel to prevent corruption and/or inefficiency in the agency.”

20. What followed thereafter is the enactment of the CVC Act, 2003. The salient features of the CVC Act, so far as the present exercise is concerned, are to be found in Section 4 of the

CVC Act which mandates that the appointment of the Central Vigilance Commissioner and the Vigilance Commissioners shall be made by the President on the recommendation of a Committee consisting of : (a) the Prime Minister; (b) the Minister of Home Affairs and (c) the Leader of the Opposition in the House of the People.

Section 6 of the CVC Act contemplates the removal of Central Vigilance Commissioner and a Vigilance Commissioner only by order of the President on the ground of proved misbehaviour or incapacity as may be found by the Supreme Court of India on a reference being made by the President to the Court. However, under sub-section (2) of Section 6 of the CVC Act there is a power in the President of suspension from office pending inquiry on the reference made to the Supreme Court. Sub-section (3) of Section 6 of the CVC Act also empowers the President to remove from office the Central Vigilance Commissioner or any Vigilance Commissioner in the following cases:

“(a). is adjudged an insolvent; or

- (b). has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (c). engages during his term of office in any paid employment outside the duties of his office; or
- (d). is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or
- (e). has acquired such financial or other interest as is likely to affect prejudicially his functions as a Central Vigilance Commissioner or a Vigilance Commissioner.”

21. Though the Director, CBI is to be appointed by the Central Government on the recommendation of a similar High Power Committee, no provision with regard to interim suspension or removal is to be found in the DSPE Act, 1946, notwithstanding the fact that the said Act i.e. DSPE Act was amended by the CVC Act, 2003. The CVC Act, 2003 and the amendments made in the DSPE Act, 1946 were clearly made to bring the provisions thereof in proximity to the directions issued by this Court in **Vineet Narain** (supra) so far as the CVC and the CBI is concerned.

22. Section 8 of the CVC Act deals with functions and powers of the CVC whereas Section 11 deals with the power of the CVC with regard to inquiries. Both the powers vested by the

aforesaid two provisions of the CVC Act i.e. Section 8 and Section 11 having been invoked in the present case to support and justify the impugned actions it will be necessary to extract and notice the said provisions in extenso:

**“8. Functions and powers of Central Vigilance Commission.-**

(1). The functions and powers of the Commission shall be to-

(a) exercise superintendence over the functioning of the Delhi Special Police Establishment in so far as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988), or an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

(b). give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1946 (25 of 1946):

Provided that while exercising the powers of superintendence under clause (a) or giving directions under this clause, the Commission shall not exercise powers in such a manner so as to require the Delhi Special Police Establishment to investigate or dispose of any case in a particular manner;

(c). inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Government or a corporation established by or

under any Central Act, Government company, society and any local authority owned or controlled by that Government, has committed an offence under the Prevention of Corruption Act, 1988 (49 of 1988) or an offence with which a public servant may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

(d). inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (2) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988 (49 of 1988) and an offence with which a public servant specified in subsection (2) may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

(e). review the progress of investigations conducted by the Delhi Special Police Establishment into offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) or the public servant may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

(f). review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988 (49 of 1988);

(g). tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise;

(h). exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government:

Provided that nothing contained in this clause shall be deemed to authorize the Commission to exercise superintendence over the Vigilance administration in a manner not consistent with the directions relating to vigilance matters issued by the Government and to confer power upon the Commission to issue directions relating to any policy matters;

2. The persons referred to in clause (d) of sub-section (1) are as follows:—

(a). members of All-India Services serving in connection with the affairs of the Union and Group 'A' officers of the Central Government;

(b). such level of officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf:

Provided that till such time a notification is issued under this clause, all officers of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in clause (d) of sub-section (1).

(c) on a reference made by the Lokpal under proviso to sub-section (1) of Section 20 of the Lokpal and Lokayuktas Act, 2013 (1 of 2014), the persons referred to in clause (d) of sub-section (1) shall also include—

(i) members of Group B, Group C and Group D services of the Central Government;

(ii) such level of officials or staff of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf:

Provided that till such time a notification is issued under this clause, all officials or staff of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred in clause (d) of sub-section (1).

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**“11. Power relating to inquiries.-**

The Commission shall, while conducting any inquiry referred to in clauses (b) and (c) of sub-section (1) of section 8, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) and in particular, in respect of the following matters, namely:-

- a. summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- b. requiring the discovery and production of any document;
- c. receiving evidence on affidavits;
- d. requisitioning any public record or copy thereof from any court or office;
- e. issuing commissions for the examination of witnesses or other documents; and
- f. any other matter which may be prescribed.”

23. The provisions of the DSPE Act as amended by Act No.45 of 2003 (The Central Vigilance Act, 2003) and Act No.1 of 2014 (Lokpal and Lokayuktas Act, 2013) may also require a specific notice. Sections 4, 4A and 4B introduced by the aforesaid amendments, on which elaborate arguments have been made by the contesting parties, provide as follows:

**“4. Superintendence and administration of Special Police Establishment.—** (1) The superintendence of the Delhi Special Police Establishment in so far as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988), shall vest in the Commission.

(2) Save as otherwise provided in sub-section (1), the superintendence of the said police establishment in all other matters shall vest in the Central Government.

(3) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government (hereinafter referred to as the Director) who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector-General of Police in respect of the police force in a State as the Central Government may specify in this behalf.

**4A. Committee for appointment of Director.—**

(1) The Central Government shall appoint the



Director on the recommendation of the Committee consisting of—

(a) the Prime Minister — Chairperson;

(b) the Leader of Opposition recognised as such in the House of the People or where there is no such Leader of Opposition, then the Leader of the single largest Opposition Party in that House — Member;

(c) the Chief Justice of India or Judge Of the Supreme Court nominated by him — Member;

(2) No appointment of a Director shall be invalid merely by reason of any vacancy or absence of a Member in the Committee.

(3) The Committee shall recommend a panel of officers—

(a) on the basis of seniority, integrity and experience in the investigation of anti-corruption cases; and

(b) chosen from amongst officers belonging to the Indian Police Service constituted under the All-India Services Act, 1951 (61 of 1951), for being considered for appointment as the Director.

**4B. Terms and conditions of service of**

**Director.**—(1) The Director shall, notwithstanding anything to the contrary contained in the rules relating to his conditions of service, continue to hold office for a period of not less than two years from the date on which he assumes office.

(2) The Director shall not be transferred except with the previous consent of the Committee referred to in sub-section (1) of section 4A.”

24. Shri F.S. Nariman and Shri Dushyant Dave, learned Senior Counsels, who have argued the case for Shri Alok Kumar Verma, Director, CBI and Common Cause have contended that the history of the institutional framework surrounding the CBI leading to the statutory enactments in question and the views expressed in the judgment of this Court in **Vineet Narain** (supra), including the operative directions under Article 142 of the Constitution, can leave no doubt that the judicial endeavour should/must always be to preserve, maintain and further the integrity, independence and majesty of the institution i.e. CBI. This is the core intent behind the statutory enactments and the amendments thereto, details of which have been noticed. The Director of the CBI is the centre of power in an abundantly powerful organization having jurisdiction to investigate and to prosecute key offences and offenders having great ramifications and consequences on public life. There can be no manner of doubt that the Director who has been given a minimum assured

tenure of “**not less than two years**” must be insulated from all external interference if the CBI has to live up to the role and expectations of the legislature and enjoy public confidence to the fullest measure. This is how the provisions of the cognate legislations i.e. the CVC Act, 2003 and DPSE Act, 1946 (as amended), must be interpreted, according to the learned counsels. It is specifically urged that the embargo under Section 4B(2) of the DSPE Act which mentions that the Director shall not be transferred except with the previous consent of the Committee must be construed in the broadest perspective to include any attempt to divest the Director, CBI of his powers, functions, duties, etc. in any manner whatsoever and not necessarily relatable to the transfer of the incumbent as is understood in ordinary parlance. According to the learned counsels, unless such a meaning is attributed to the provisions of Section 4B(2) of the DSPE Act, the legislative intent would be rendered futile and so would be the entire judicial exercise culminating in the operative directions of this Court in **Vineet Narain** (supra).

25. So construed, according to the learned counsels, the exercise of power in the present case is blatantly and patently

flawed. There can be no legal recognition of the action taken on the strength of the impugned orders which have been notified without seeking the previous consent of the Committee for appointment of Director, CBI constituted under Section 4A(1), of the DSPE Act, 1946.

26. The alternative argument made is that if the provisions of Section 4B(2) of the DSPE Act are to be “narrowly” construed by understanding the word “transfer” as is normally understood in service jurisprudence, the ultimate validity of the impugned exercise will have to be tested by the adequacy and sufficiency of reasons to justify a premature curtailment of the tenure of the Director, CBI. No such justification, according to the learned counsels, exists. In this regard, it has been pointed out that the allegations against the Director, CBI made by Special Director, CBI Shri Rakesh Asthana and the purported inquiry into such allegations by the CVC and the disinvestment of powers during the interregnum i.e. pendency of the inquiry are wholly unjustified actions prompted by collateral reasons. Interference, in the larger public interest, by this Court in the exercise of

powers of judicial review under Article 32 of the Constitution of India would therefore be called for.

27. The aforesaid argument has been countered by Shri K.K. Venugopal, learned Attorney General appearing for the Union of India who contends that the role of the Committee under Section 4A(1) of the DSPE Act is limited to making recommendations on the basis of which the Central Government is to make the appointment. According to the learned Attorney, once the recommendation is made by the Committee and the appointment is made, the Committee becomes functus officio. Reliance has been placed in this regard on **Shankarsan Dash vs. Union of India**<sup>2</sup> and **Jai Singh Dalal and others vs. State of Haryana & another**<sup>3</sup> to contend that when the law does not recognize in any incumbent, who may have been recommended, a right to be appointed it cannot be contended that after the appointment is made the Committee constituted to make recommendations for appointment has to be consulted in all cases of disinvestment of power, even beyond what is specifically provided for by Section 4B(2) of the DSPE Act. Section 4B(2), it is

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<sup>2</sup> (1991) 3 SCC 47

<sup>3</sup> 1993 Supp. (2) SCC 600

pointed out provides/mandates the requirement of previous consent only in cases of transfer of the Director which is also what had been directed by this Court in paragraph 58(8) of the report in **Vineet Narain** (supra). The Learned Attorney has further submitted that the present is not a case of transfer so as to require the previous consent of the Committee under Section 4B(2) of the DSPE Act. Reliance has also been placed on the provisions of Section 16 of the General Clauses Act, 1897 to persuade the Court to recognise in the Central Government a power to divest the Director, CBI of his powers, functions, duties, etc. According to the learned Attorney the power to divest must be acknowledged to be the logical corollary of the power of appointment of the Director, CBI which is vested in the Central Government.

28. On the other hand, Shri Tushar Mehta, learned Solicitor General appearing for the CVC has argued that merely on the appointment of a Member of the Indian Police Service as the Director, CBI, the incumbent does not cease to be a public servant/government servant. He continues to be, according to the learned Solicitor General, a civil servant; a member of the

Indian Police Service amenable to all service conditions as applicable and also to the disciplinary control of the Competent Authority. The only exception in this regard, according to the learned Additional Solicitor General, is provided by Section 4B(1) of the DSPE Act which provides for a fixed tenure of the Director. It is only the Rules/conditions of service so far as the retirement is concerned that stands diluted/affected by the provisions of Section 4B(1) of the DSPE Act and none other.

29. In brief, these are the broad submissions of the contesting parties. It has been further supplemented by the learned counsels for the petitioner that on a meaningful interpretation of the provisions of the relevant statutes the Court should take the view that what is provided therein is a complete insulation of the incumbent holding the post of Director of the CBI and no action affecting his continuance and functioning can be taken except with the previous consent of the Committee under Section 4A of the DSPE Act. It is only after the incumbent ceases to hold the post of Director, upon transfer or otherwise, made with the previous consent of the Committee, that the

disciplinary control over such incumbent as a civil servant can be exercised by the Central Government.

30. The contentions advanced by the rival parties would require the Court to consider two issues to determine the validity of the impugned orders. The first is the competence of the CVC and the Government of India to divest the Director, CBI of all his powers, functions, duties, supervisory role, etc. without obtaining the prior consent of the Committee constituted under Section 4A(1) of the DSPE Act to make recommendations for appointment of the Director, CBI. Learned counsels for the petitioners are emphatic in their contentions that obtaining such prior consent is the in-built mandate under the Statute which flows from the operative directions issued by this Court in paragraph 58 of **Vineet Narain** (supra). Therefore, according to the learned counsels for the petitioners, the impugned orders passed without obtaining prior consent of the Committee are non-est in law and no other issue really need be gone into in the present case.

31. The above contention raises a pure question of law answerable on application of known and established principles of law including interpretation of the provisions of the CVC Act,



2003 and the DSPE Act, 1946 and further in the light of such legislative intent that can be culled out in making the enactments in question. Not only do we prefer to deal with the said question in the first instance for the above stated reason but such an exercise becomes obligatory in view of the jurisdictional questions that are inbuilt therein. On the aforesaid basis the second question raised can be relegated to a later stage of consideration, which question, we may indicate is one relating to the sufficiency/adequacy or even the relevance of the reasons that had prompted the CVC and the Government of India to take the impugned decisions, a question that may legitimately call for an answer only in the event of our disagreeing with the contentions advanced on behalf of the petitioner on the first issue namely that the divestment of power and authority of the Director, CBI can only be with the prior consent of the Committee.

32. There is no manner of doubt that the enactment of the CVC Act, 2003 and the amendments made by the said enactment, *inter alia*, in the DSPE Act (by Section 26 of the CVC Act, 2003) are a sequel to the operative directions of this Court in paragraph 58 of **Vineet Narain** (supra). The legislature in its

wisdom had not considered the necessity of tempering down the directions of this Court in **Vineet Narain** (supra) in any manner whatsoever. The mode and manner of appointment of Central Vigilance Commissioner and Vigilance Commissioners as well as that of the Director, CBI as spelt out by this Court in **Vineet Narain** (supra) has been scrupulously followed by Parliament. In fact, at this stage, we may even take note of the fact that Parliament on its own in amending Section 4A of the DSPE Act by the Lokpal and Lokayuktas Act, 2013 (Act No.1 of 2014) has gone a step further to give effect to the directions of this Court made in **Vineet Narain** (supra) inasmuch as the object for change of the Committee for making recommendations for appointment of the Director, CBI has been stated to be the necessity **“to provide a High Power Selection Committee for selection of Director of the Delhi Special Police Establishment”**.

33. The Court, in its bid to understand the true legislative intention behind the statutory enactments in question, cannot be oblivious of the views expressed by this Court in **Vineet Narain**

(supra) leading to the operative directions in para 58 that formed the basis of the legislative exercise in question. The said views must be understood to have been considered fully by Parliament before engrafting the consequential directions contained in paragraph 58 of **Vineet Narain** (supra) in the form of statutory enactments, details of which have been noticed earlier. In this regard, paragraphs 3 and 48 of the report of this Court in **Vineet Narain** (supra) must hold a special field so as to deserve a recall of the contents thereof which are in the following terms:

“3. This experience revealed to us the need for the insulation of these agencies from any extraneous influence to ensure the continuance of the good work they have commenced. It is this need which has impelled us to examine the structure of these agencies and to consider the necessary steps which would provide permanent insulation to the agencies against extraneous influences to enable them to discharge their duties in the manner required for proper implementation of the rule of law. Permanent measures are necessary to avoid the need of every matter being brought to the court for taking ad hoc measures to achieve the desired results. This is the occasion for us to deal with the structure, constitution and the permanent measures necessary for having a fair and impartial agency. The faith and commitment to the rule of law exhibited by all concerned in these proceedings is the surest guarantee of the survival of democracy

of which rule of law is the bedrock. The basic postulate of the concept of equality: “Be you ever so high, the law is above you,” has governed all steps taken by us in these proceedings.

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48. In view of the common perception shared by everyone including the Government of India and the Independent Review Committee (IRC) of the need for insulation of the CBI from extraneous influence of any kind, it is imperative that some action is urgently taken to prevent the continuance of this situation with a view to ensure proper implementation of the rule of law. This is the need of equality guaranteed in the Constitution. The right to equality in a situation like this is that of the Indian polity and not merely of a few individuals. The powers conferred on this Court by the Constitution are ample to remedy this defect and to ensure enforcement of the concept of equality.”

34. These are the basic facts that cannot be overlooked while gathering the intention of the legislature in making the provisions contained in Section 4A and Section 4B of the DSPE Act. An indepth consideration of the matter leaves us with no doubt that the clear legislative intent in bringing the aforesaid provisions to the statute book are for the purpose of ensuring complete insulation of the office of the Director, CBI from all kinds of extraneous influences, as may be, as well as for

upholding the integrity and independence of the institution of the CBI as a whole.

35. There are certain other relevant facts that cannot be ignored. The provisions of various State enactments (Police Act), as for example Uttarakhand Police Act 2007, following the decision of this Court in **Prakash Singh And Others** vs. **Union of India And Others**<sup>4</sup> (2006) 8 SCC 1, while providing for a tenure of two years to the Director General of Police of the State expressly contemplates removal of the incumbent before expiry of the of the tenure on certain specified grounds [Section 20 (4) & (5)]. Similarly, Section 6 of the CVC Act, which has been extracted above, specifically contemplates certain interim measures against the Central Vigilance Commissioner or a Vigilance Commissioner pending consideration by the Supreme Court of the reference made by the President to the Court for removal of any such incumbent. Removal of any of the aforesaid incumbents holding any of the aforesaid posts is also contemplated on certain contingencies occurring as spelt out by sub-section (3) of Section 6 of the CVC Act. No such provision has been engrafted so far as

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4 (2006) 8 SCC 1

the office of the Director, CBI is concerned except what is contained in Section 4B(2) of the DSPE Act, namely, that “**the Director shall not be transferred except with the previous consent of the Committee**” referred to in sub-section (1) of section 4A”. As already noticed, Section 4B including sub-section (2) thereof of the DSPE Act, as it exists on date, were brought in by the same legislation i.e. CVC Act (Act No.45 of 2003).

36. If the legislative intent would have been to confer in any authority of the State a power to take interim measures against the Director, CBI thereby affecting his functioning, surely, the legislation would have contained enabling provisions to that effect and consequently would have been differently worded and drafted. It is against this backdrop that the words “**transferred except with the previous consent of the Committee**” mentioned in Section 4B(2) of the DSPE Act has to be understood. If the word “transferred” has to be understood in its ordinary parlance and limited to a change from one post to another, as the word would normally convey and on that basis the requirement of “**previous consent of the Committee**” is

understood to be only in such cases, i.e. purely of transfer, such an interpretation would be self-defeating and would clearly negate the legislative intent. In such an event it will be free for the State Authority to effectively disengage the Director, CBI from functioning by adopting various modes, known and unknown, which may not amount to transfer but would still have the same effect as a transfer from one post to another, namely, cessation of exercise of powers and functions of the earlier post. This is clearly not what the legislature could have intended. The long history of evolution has shown that the institution of the CBI has been perceived to be necessarily kept away from all kinds of extraneous influences so that it can perform its role as the premier investigating and prosecuting agency without any fear and favour and in the best public interest. The head of the institution, namely, the Director, naturally, therefore, has to be the role model of independence and integrity which can only be ensured by freedom from all kinds of control and interference except to the extent that Parliament may have intended. Such intendment, in our considered view, would require all Authorities to keep away from intermingling or interfering in the functioning of the Director. In a situation where such interference may at all

be called for, public interest must be writ large against the backdrop of the necessity. The relevance and adequacy of the reasons giving rise to such a compelling necessity can only be tested by the opinion of the Committee constituted under Section 4A(1) of the DSPE Act in whom the power to make recommendations for appointment of the Director has been vested by Parliament. This alone can provide an adequate safeguard to ensure the independence of the office keeping in view the legislative intent, as found and held by us. In this regard we feel fortified in saying that the status of the Committee having undergone an upward movement by the amendment brought in by the Lokpal and Lokayuktas Act, 2013 (Act No.1 of 2014) it cannot but be said that the legislative intent in shielding and insulating the office of the Director from any kind of extraneous influence has been foremost in the mind of Parliament which intent found manifestation in the changes in law brought about in the circumstances noted above.

37. There is yet another issue of significance that arises from the weighty arguments advanced in the course of the long debate that has taken place. This is with regard to the application of Sections 14, 15 and 16 of the General Clauses Act,



1897 so as to confer a power in the Central Government to pass the impugned orders including the order of appointment of an acting Director of the CBI. The preceding discussions and our views on the true and correct meaning of the provisions contained in Sections 4A & 4B of the DSPE Act leaves us convinced that the aforesaid provisions of the General Clauses Act will have no application to the present case in view of the clear and apparent intention to the contrary that unequivocally flows from the aforesaid provisions of the DSPE Act.

38. So far as the correctness of the impugned decisions on merit is concerned, not much argument have been made either on the relevance or the sufficiency of the grounds shown and disclosed for the impugned decisions. This is, perhaps, on the understanding of the learned counsels that our attempts to keep the report of the enquiry by the CVC ordered on 26<sup>th</sup> October and 12<sup>th</sup> November, 2018 in sealed cover was sufficiently indicative of the mind of the Court that this aspect of the case should require to be unfolded only if inevitable and that too in the event of a negative decision on the jurisdictional question. The inherent limitation in such an exercise of, if at all is to be undertaken, is

another inhibiting factor. Be that as it may such an exercise has now become wholly unnecessary in view of the decision on the jurisdictional issue.

39. Consequently, in the light of our views as expressed above we set aside the following orders dated 23<sup>rd</sup> October, 2018:

- (i) of the CVC divesting the powers, functions, duties, supervisory role, etc. of Shri Alok Kumar Verma as Director, CBI
- (ii) of the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training divesting Shri Alok Kumar Verma, Director, CBI of his functions, powers, duties and supervisory role with immediate effect and until further orders.
- (iii) of the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training by which one Shri M. Nageshwar Rao, IPS, Joint Director, CBI has been asked to look after the duties and functions of Director, CBI with immediate effect.

40. Our interference, as above, will now require the matter to be considered by the Committee under Section 4A(1) of the DSPE

Act, 1946 which may be so done at the earliest and, in any case, within a week from the date of this order. A meeting of the Committee may be accordingly convened by the competent authority.

41. As the issue of divestment of power and authority of the Director, CBI is still open for consideration by the Committee and our interference with the impugned orders has been on the ground indicated above, we deem it proper to direct that the petitioner Shri Alok Kumar Verma, Director, CBI, upon reinstatement, will cease and desist from taking any major policy decisions till the decision of the Committee permitting such actions and decisions becomes available within the time frame indicated. We further make it explicit that the role of the Petitioner Shri Alok Kumar Verma as the Director, CBI during the interregnum and in terms of this order will be confined only to the exercise of the ongoing routine functions without any fresh initiative, having no major policy or institutional implications.

42. Coming to the several IAs filed, we are of the view that the orders of transfer etc. impugned/mentioned in the said IAs

are a sequel of the three orders dated 23<sup>rd</sup> October, 2018 which were specifically impugned in the writ petitions. As we have answered the writ petitions in the manner indicated above, we do not consider it necessary to examine the correctness of the further/consequential orders of transfer etc. and that too on the basis of interlocutory applications filed in pending writ petitions under Article 32 of the Constitution, which stand disposed of by the present order. However, we leave the parties with the remedy of challenging the said consequential orders in an appropriate manner and before the appropriate forum, if so required and so advised.

43. Both writ petitions and all the IAs are accordingly disposed of.

.....,CJI  
[**RANJAN GOGOI**]

.....,J  
[**SANJAY KISHAN KAUL**]

.....,J  
[**K.M. JOSEPH**]

**NEW DELHI**  
**JANUARY 08, 2019**