2026 INSC 644

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.3743 OF 2024

SPECIAL POLICE ESTABLISHMENT **APPELLANT**

VERSUS

KAMTA PRASAD MISHRA AND OTHERS **RESPONDENTS**

J U D G M E N T

ATUL S. CHANDURKAR, J

1. The appellant is aggrieved by the direction to supply information to the first respondent as regards details of the process of grant of sanction for his prosecution under the Prevention of Corruption Act, 1988[1] as well as the response of the Lokayukt to the queries made by him on various points.

According to the appellant, by virtue of Notification dated 25.08.2011 issued by the General Administration Department[2] of the State of Madhya Pradesh in exercise of power under Section 24(4) of the Right to Information Act, 2005[3] and in view of Section 24(1)(h) thereof, it could not have been directed to supply such

[1] For short, 'the Act of 1988'
[2] For short, 'GAD'
[3] For short, 'the Act of 2005'

information. On the other hand, according to the first respondent, the information sought is liable to be provided as there is no legal impediment in doing so.

Background facts

2. Bereft of unnecessary details, the first respondent while serving as Town Inspector, Police Station Madhav Nagar, Katni came to be implicated by the Special Police Establishment, Bhopal, Madhya Pradesh under the Act of 1988 in a trap case. A First Information Report was registered on 11.04.2017. The Home Department of the State Government on 20.05.2020 granted sanction for his prosecution. The first respondent desired information with regard to the decision making process in the grant of sanction and thus moved an application dated 01.07.2020 under Section 6(1) of the Act of 2005. The request for supply of information having been turned down, the proceedings reached the State Information Commission[4] at the behest of the first respondent which, however, rejected the appeal filed by him on 16.12.2020. According to the Commission, the first respondent was not entitled to be supplied the said information in view of Section 8(1)(h) of the Act of 2005. Being aggrieved, the first

[4] For short, 'the Commission'

respondent approached the High Court of Madhya Pradesh[5]. The Division Bench after hearing the first respondent found that the investigation in the criminal proceedings was complete and therefore the first respondent could not be denied such information by relying upon Section 8(1)(h) of the Act of 2005. The appellant was, accordingly, directed to supply the information sought by the first respondent as per his application dated 01.07.2020. Being aggrieved by this direction, the present appeal has been preferred.

Submissions of parties

3. Mr. Nishant Katneshwarkar, learned counsel appearing for the appellant submitted that the High Court erred in directing the appellant to supply the information sought by the first respondent. According to him, in view of the provisions of Section 8(1)(h) of the Act of 2005, the appellant was exempted from disclosing the information sought by the first respondent inasmuch as that information was likely to impede the process of investigation of the criminal proceedings that had been initiated against him. He further submitted that pursuant to Section 24(4) of the Act of 2005, the GAD of the State Government had issued a Notification on 25.08.2011 by virtue of which the Act of 2005 was not made

[5]For short, 'the High Court'

applicable to the Madhya Pradesh Special Police Establishment of Lokayukt Organisation[6]. The investigation against the first respondent having been carried out by the SPE, it was not permissible to supply the information sought by him as the provisions of the Act of 2005 were inapplicable. The High Court failed to notice the provisions of Section 8(1)(h) of the Act of 2005 and directed supply of such information. Reference was made to the Notification dated 25.08.2011 before the High Court but it was not taken into consideration. On a plain reading of the same, it was clear that the provisions of the Act of 2005 were not applicable to the SPE. It was, therefore, submitted that the impugned judgment of the High Court was liable to be set aside and the order passed by the Commission ought to be restored.

4. Mr. Naveeen Kumar Singh, learned counsel appearing for the first respondent supported the impugned order. According to him, the provisions of Section 8(1)(h) of the Act of 2005 were not at all attracted to the facts of the present case inasmuch as the investigation of the offence registered against the first respondent under the Act of 1988 was completed and a charge-sheet had been filed. The object behind the provisions of Section 8(1)(h) of the Act of 2005 was that information that was likely to impede the process

[6] For short, 'SPE'

of investigation or apprehension or prosecution of offenders was not liable to be furnished. The first respondent had merely sought information as to the manner in which sanction was granted to his prosecution and the communications exchanged in that regard. Supply of such information was not likely to impede the process of investigation. The High Court was, therefore, justified in directing supply of the information sought by the first respondent on 01.07.2020. No case was, thus, made out to interfere with the judgment of the High Court.

Issue re: applicability of Notification dated 25.08.2011

5. On behalf of the appellant, the issue as regards applicability of the Notification dated 25.08.2011 was argued. Relying heavily upon the same, it was urged that in view of the said Notification, the impugned order could not have been passed. During the course of hearing, the question whether the SPE while assisting the Lokayukt in carrying out functions assigned to it under Section 3 of the Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981[7] could be treated as an 'intelligence and security' organisation arose for consideration. Applicability of the said Notification to the SPE in the absence of it being an 'intelligence and security' organisation for the purposes of Section 24 (4) of the

[7]For short, 'the Act of 1981'

Act of 2005 was, *prima facie,* doubted. There was no appearance on behalf of the State of Madhya Pradesh on 14.05.2026. With a view to have the response of the State Government, the following order insofar as it is material for the present adjudication was therefore passed:

> "1. In the instant case order impugned dated 20.12.2021 passed by the High Court of Madhya Pradesh, Principal Bench at Jabalpur in Writ Petition No. 1575 of 2021 is under challenge whereby the High Court directed that the order dated 17.08.2020 issued by the Assistant Public Information Officer and order dated 16.12.2020 of the Chief Information Commissioner are liable to be quashed. It was further directed that the respondent shall supply information as sought by the appellant as per his request dated 01.07.2020 within 30 days and imposed a costs of Rs. 5,000/-.
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> 2. The said order has been assailed in this appeal on the pretext that as per Notification of the State Government dated 25.08.2011 exemption is granted to Madhya Pradesh Special Police Establishment of Lokayukta Organisation, however, without taking note of the said notification directions have been issued.
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> 3. During the course of hearing, the provisions of Section 24(1) of the Right to Information Act, 2005, (in short, "the RTI Act), applies to the intelligence and security organisation of the Central Government specified in the Second Schedule. In the Second Schedule, certain organisations have been specified which are of the Central Government.
>
> 4. Sub-section (4) of Section 24 of the RTI Act further specifies that the provisions of the Act shall not apply to such intelligence and security organisations established by the State Government if notified in the Official Gazette. Thus, for issuance of the notification of exemption under Section 24(4), it is incumbent to understand how Lokayukta established is an intelligence and security organisation; but nothing has been brought on record. In absence, the notification dated 25.08.2011 is contrary to the spirit of Section 24(1) read with Section 24(4) of the RTI Act. The counter affidavit filed by the State is silent on this point, however, response of the State Government, if any, may be filed, otherwise such notification do not have any sanction of law."
>
> xxxxxxxx
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> "8. The Advocate General of the State may clarify about paragraph

> 4 above and to appear for argument on the next date, if he wish to appear virtually, he is at liberty to do so. In absence of clarification, appropriate orders may be passed."

6. On 20.05.2026, Ms. Manisha Karia, learned Senior Advocate as well as Mr. Prashant Singh, learned Advocate General for the State of Madhya Pradesh were heard. It was submitted by them that the Notification dated 25.08.2011 had not been challenged by the first respondent in the writ petition preferred by him before the High Court. There were no pleadings whatsoever raised in that regard. In absence of any such material pleadings, it was submitted that the validity of the said Notification may not be examined for the first time by this Court. Without prejudice to the aforesaid, it was submitted that the State Legislature was competent to enact the Act of 1981. Reference was made to the Seventh Schedule to the Constitution of India and Entries 1 and 2 of List II to justify the exercise of power in this regard. Referring to the object behind enacting the Act of 1981, it was submitted that the Lokayukt was a statutory investigative authority vested with plenary powers of enquiry and its jurisdiction extended to allegations of corruption, misconduct and malfeasance by a public servant. The SPE functioned as an investigative arm under the superintendence of the Lokayukt. It was in this backdrop that the power conferred by Section 24(4) of the Act of 2005 had been

exercised and the Notification dated 25.08.2011 had been issued keeping in mind the principle of institutional parity. The object behind Section 24 of the Act of 2005 would be defeated if the State Government was compelled to furnish information which was sought to be exempted by virtue of that provision. Reference was made to Section 207 of the Code of the Criminal Procedure, 1973 to urge that at the initial stage of investigation, material collected by the investigating agency could not be sought by an accused.

It was, therefore, submitted that the view taken by the Commission was correct and the High Court was not justified in directing supply of information sought by the first respondent. In view of the Notification dated 25.08.2011, the impugned order was liable to be set aside.

Consideration

7. We have heard the learned counsel for the parties at length. We have also given due consideration to the relevant material on record as well as material furnished by the learned counsel for the parties. The High Court while allowing the writ petition preferred by the first respondent held that the information sought by him could not be denied by relying upon Section 8(1)(h) of the Act of 2005. Before this Court, the Notification dated 25.08.2011 was relied upon to urge that the High Court could not have directed

supply of such information. It is in that context that the applicability of the Notification dated 25.08.2011 was debated. Besides its inapplicability, the question whether the SPE was an 'intelligence and security' organisation for the purposes of Section 24(4) of the Act of 2005 arose for consideration. It is true that the said Notification was not specifically challenged in the writ petition before the High Court. It is also a fact that the appellant had not specifically supported the order passed by the Commission by relying upon the same. The Notification was placed before this Court in the present proceedings and the impugned order was sought to be assailed by relying upon the Notification dated 25.08.2011. It was at this stage that the issue as regards applicability of the Notification dated 25.08.2011 arose. It would, therefore, be necessary to consider whether this Court should examine the validity of the Notification dated 25.08.2011, especially when the same had not been challenged by the first respondent in his writ petition before the High Court.

Exercise of *suo motu* jurisdiction

8. The exercise of *suo motu* jurisdiction by the Court in examining the validity of a subordinate piece of legislation has been the subject matter of consideration in various decisions. Recently, in **Bihar Rajya Dafadar Chaukidar Panchayat (Magadh**

Division) Vs. State of Bihar and others[8], it was observed in paragraph 33 as under:

> "**33.** …While not suggesting for a moment that the course of action which the Division Bench adopted in this case can routinely be adopted, we see no reason as to why the power to *suo motu* declare a subordinate legislation invalid, on the ground of its being manifestly contrary to a Fundamental Right read with binding precedents in terms of Article 141, should not be conceded to be within the vast reserve of powers of the Constitutional Courts. Though exercise of powers, *suo motu,* in an appropriate case in exercise of jurisdiction under Article 226 of the Constitution cannot be doubted, it is indubitable that such power has to be exercised sparingly and with due care, caution and circumspection. We are minded and do hold that, a writ court, when its finds its conscience to be pricked in a rare and very exceptional case by the patent unconstitutionality of a subordinate legislation connected with the issue it is seized of, may, upon grant of full opportunity to the State to defend the subordinate legislation and after hearing it, grant a declaration as to unconstitutionality and/or invalidity of such legislation. After all, as the sentinel on the *qui vive,* it is not only the duty of the writ courts in the country to enforce Fundamental Rights of individuals, who approach them, but it is equally the duty of the writ courts to guard against breach of Fundamental Rights of others by the three organs of the State. This power is a plenary power resident in all the Constitutional Courts. Should, in a given case, it be found that there has been an egregious violation of a Fundamental Right as a result of operation of a subordinate legislation and the issue I concluded by a binding decision of this Court, we consider it the duty of the writ courts to deliver justice by declaring the subordinate legislation void to safeguard rights of others who might not still have been affected thereby. We reiterate, it can only be done rarely and in cases which stand out from the ordinary."

9. Absence of a prayer seeking declaration of invalidity of a piece of subordinate legislation by itself would not deter the Court from testing its validity. Such issue can be examined but after granting opportunity to the concerned authority to justify its validity. We may in this regard refer to the decision in **Bharathidasan**

[8] SLP(C) No.18983 of 2023 decided on 02.04.2025

University and another Vs. All India Council for Technical Education and others[9]. The issue related to examining the validity of a regulation duly framed. It was found that the regulation provided for a matter that was beyond its authority. In that context, the following observations are material for the present purpose:

> "The AICTE cannot, in our view, make any regulation in exercise of its powers under Section 23 of the Act, notwithstanding sub-section (1), which though no doubt enables such regulations being made generally to carry out the purposes of the Act, when such power is circumscribed by the specific limitation engrafted therein to ensure them to be "not inconsistent with the provisions of the Act and the rules….." So far as the question of granting approval, leave alone prior or post, Section 10(1)(k) specifically confines the limits of such power of AICTE only to be exercised vis-a-vis technical institutions, as defined in the Act and not generally. When the language is specific, unambiguous and positive, the same cannot be over-looked to give an expansive meaning under the pretext of a purposive construction to perpetuate an ideological object and aim, which also, having regard to the Statement of Objects and Reasons for the AICTE Act, are not warranted or justified. Therefore, the regulation insofar as it compels the universities to seek for and obtain prior approval and not to start any new department or course or programme in technical education (Regulation 4) and empower itself to withdraw such approval, in a given case of contravention of the regulations (Regulation 12) are directly opposed to and inconsistent with the provisions of Section 10(1)(k) of the Act and consequently void and unenforceable.
>
> The fact that the regulations may have the force of law or when made have to be laid down before the legislature concerned do not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make regulations are confined to certain limits and made to flow in a well defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the courts are bound to ignore them when the question of their enforcement arise and the mere fact that there was no specific relief sought for to strike down or declare them *ultra vires*, particularly when the party in sufferance is a respondent to the lis or proceedings

[9] 2001 INSC 454

> cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack. It would, therefore, be a myth to state that regulations made under Section 23 of the Act have "Constitutional" and legal status, even unmindful of the fact that anyone or more of them are found to be not consistent with specific provisions of the Act itself. Thus, the regulations in question, which the AICTE could not have made so as to bind universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind an University in the matter of any necessity to seek prior approval to commence a new department or course and programme in technical education in any university or any of its departments and constituent institutions."
>
> (emphasis supplied by us)

10. We are conscious of the fact that in **Union of India and others vs. Manjurani Routray and others**[10], this Court has held that before any provision of law is struck down or any Rule is declared as *ultra vires,* specific pleadings raising a challenge and seeking of such relief is necessary. Therein, an original application was filed by a private respondent raising a challenge to the order of promotion issued to her juniors. The Central Administrative Tribunal directed the employer to indicate the reasons for non-promotion of the private respondent by assigning reasons in that regard. This order was challenged by the said respondent before the High Court. While deciding the writ petition, the High Court examined the *vires* of Rule 4(b) of the Ministry of Information Technology (in-situ Promotion under Flexible Complementing Scheme) Rules, 1998 and held the same to be invalid in law. The

[10]2023 INSC 787

Union of India challenged the judgment urging that in absence of any specific challenge being raised by the private respondent to the *vires* of Rule 4(b), the High Court could not have entertained such challenge. In that context, this Court held that in absence of specific pleadings being raised for challenging the *vires* of Rule 4 (b), there would be no opportunity to the other side to justify the validity of such Rule. It was held that the High Court was not justified in declaring Rule 4(b) of the Ministry of Information Technology (in-situ Promotion under Flexible Complementing Scheme) Rules, 1998 as *ultra vires*. One of us (J. K. Maheshwari, J) was a party to the aforesaid decision.

In the present case, it is true that there is no specific challenge raised by the first respondent to the Notification dated 25.08.2011. However, while assailing the order passed by the High Court, the Notification dated 25.08.2011 has been relied upon by the appellant to urge that the information sought by the first respondent could not be supplied to him as the SPE was an 'intelligence and security' organisation that was excluded from the applicability of the Act of 2005. The issue of applicability as well as validity of the Notification dated 25.08.2011 having arisen, due opportunity was granted to the State Government to justify the same. Time was granted to the learned Advocate General to place

on record the stand of the State Government and also to substantiate the contention that the Notification dated 25.08.2011 was in consonance with Section 24(4) of the Act of 2005. The opportunity so granted was utilised and the State Government through Ms. Manisha Karia, learned Senior Advocate as well as Mr. Prashant Singh, learned Advocate General for the State of Madhya Pradesh were heard extensively. The State was also permitted to place on record its written submissions in that regard. The same have been accordingly filed.

It is, thus, evident that sufficient opportunity was granted to the State Government to make its stand clear with regard to the Notification dated 25.08.2011 and also to justify its validity in the context of Section 24(4) of the Act of 2005.

11. In the present case, we are concerned with the aspect as to whether the SPE as constituted under Section 2(1) of the Madhya Pradesh Special Police Establishment Act, 1947[11] for investigating offences specified by the State Government under Section 3 of the Act of 1947 is entitled to exemption from the application of the Act of 2005 by virtue of Section 24(4) thereof. What requires examination is whether the SPE is an 'intelligence and security' organisation, given the nature of offences it can investigate. To put

[11] For short, 'the Act of 1947'

it differently, whether the SPE can seek exemption from the application of the Act of 2005 on the ground that it is an 'intelligence and security' organisation. A pure question of interpretation of the relevant provisions of the Act of 1947 and the Act of 1981 in the context of Section 24 of the Act of 2005 arises. The issue whether the Notification dated 25.08.2011 provides for a matter beyond the parent legislation or whether it is *intra vires* Section 24(4) of the Act of 2005 has to be examined. In absence of any factual adjudication being required to be undertaken and a pure question of interpretation having arisen, we are inclined to examine this legal question though it was not specifically raised before the High Court.

Grounds for challenging subordinate legislation

12. It is by now well settled that a piece of subordinate legislation does not carry the same degree of immunity that is enjoyed by a statute passed by a competent legislature. Besides the grounds on which plenary legislation can be challenged, subordinate legislation can also be challenged on the ground that it fails to conform to the statute under which it is made or it exceeds the limits of authority conferred by the enabling statute. In **Indian Express Newspapers (Bombay) Private Ltd. and others etc. Vs.**

Union of India and others etc.[12], a three Judge Bench of this Court observed as under:

> "A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute."

This view has been consistently followed. In **State of Tamil Nadu and another Vs. P. Krishnamurthy and others**[13], it was held as under:

> "There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a subordinate legislation can be challenged under any of the following grounds:
>
> (a) Lack of legislative competence to make the subordinate legislation.
> (b) Violation of fundamental rights guaranteed under the Constitution of India.
> (c) Violation of any provision of the Constitution of India.
> (d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
> (e) Repugnancy to the laws of the land, that is, any enactment.
> (f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules)."

Statutory scheme

13. For considering the aforesaid question, it would be necessary to refer to some relevant provisions of the Act of 2005. Section 3

[12] 1984 INSC 231
[13] 2006 INSC 177

recognises the right of all citizens to information. A request for obtaining 'information' as defined by Section 2(f) is required to be made under Section 6 of the Act of 2005. While such request has to be considered and disposed in accordance with Section 7, Section 8(1) exempts disclosure of information in certain contingencies. Section 8(1)(h) reads thus:

> "**8. Exemption from disclosure of information.**-(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-
> (h) information which would impede the process of investigation or apprehension or prosecution of offenders;"

Since the appellant has relied upon the provisions of Section 24 and especially Section 24(4) of the Act of 2005, the said provision is reproduced hereunder:

> "**24. Act not to apply in certain organizations**-(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:
>
> Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:
>
> Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request.
>
> (2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.
>
> (3) Every notification issued under sub-section (2) shall be laid

before each House of Parliament.

(4) Nothing contained in this Act shall apply to such intelligence and security organisations, being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request.

(5) Every notification issued under sub-section (4) shall be laid before the State Legislature."

It is to the noted that Section 24(1) and Section 24(4) use the expression 'intelligence and security organisations'. This would indicate that an organisation governed by the said provision ought to be empowered to go into aspects of 'intelligence' and 'security'.

14. Section 24(1) of the Act of 2005 states that the provisions of the Act would not apply to 'intelligence and security' organisations specified in the Second Schedule to the Act of 2005. Perusal of the Second Schedule indicates reference to about twenty-six organisations concerned with 'intelligence' and 'security' that have been established by the Central Government. Section 24(4) states that nothing contained in the Act of 2005 would apply to such 'intelligence and security' organisations established by the State Government as notified in the Official Gazette. The exemption from application of the provisions of the Act of 2005 is, therefore,

restricted to 'intelligence and security' organisations that have been established by the State Government by publishing Notification in the Official Gazette. The first proviso to Section 24(4) of the Act of 2005, however, does not exclude information pertaining to allegations of corruption and violation of human rights.

15. The expression 'intelligence and security' organisations found in Section 24 has not been defined in the Act of 2005. We may, therefore, consider the nature of various organisations established by the Central Government which are concerned with 'intelligence and security' that are referred to in the Second Schedule. For example, the Directorate of Enforcement (ED) was established on 01.05.1956 for handling Exchange Control laws violations under the Foreign Exchange Regulations Act, 1947. One of its functions is to collect, develop and disseminate intelligence relating to the Foreign Exchange Management Act, 1999. The Central Reserve Police Force has been mentioned in the Second Schedule. As per the Central Reserve Police Force Act, 1949, it is an armed force maintained by the Central Government and is concerned with internal security. A member of the force has to execute all orders and warrants lawfully issued to him, detect and bring offenders to justice and also apprehend all persons whom he is legally

authorised to apprehend. Then, the Border Security Force constituted under the Border Security Force Act, 1968 is an armed force of the Union for ensuring the security of the borders of India. Similarly, the Central Industrial Security Force is an armed force of the Union constituted under the Central Industrial Security Force Act, 1968 for better protection and security of industrial undertakings owned by the Central Government. The National Investigation Agency is also referred to in the Second Schedule. It is an investigation agency at the national level constituted to investigate and prosecute offences affecting the sovereignty, security and integrity of India.

It is, thus, clear that organisations referred to in the Second Schedule to the Act of 2005 are specifically concerned with 'intelligence' and 'security', having been constituted by the Central Government with that object in mind. On the other hand, the SPE has been clothed with limited jurisdiction to investigate offences punishable under the Act of 1988, Sections 409, 420 and Chapter XVIII of the Penal Code. The submission on behalf of the State of Madhya Pradesh that the principle of institutional parity was considered while issuing the Notification dated 25.08.2011 therefore cannot be accepted.

Notification dated 25.08.2011

16. In exercise of the power conferred by Section 24(4) of the Act of 2005, the GAD of the State of Madhya Pradesh has issued Notification dated 25.08.2011 wherein it is stated that the provisions of the Act of 2005 would not apply to cases under investigation by the SPE and the State Bureau of Investigation of Economic Offences. The Notification dated 25.08.2011 reads as under:

> "Whereas the State Government considers that the disclosure of the information regarding names of informers or complainants in the economic offences under investigation in Madhya Pradesh Special Police Establishment of Lokayukta Organization and State Bureau of Investigation of Economic Offences under the Right to Information Act, 2005 (No. 22 of 2005) may likely to endanger the life or physical safety of such informers or complainants;
> And whereas the State Government also considered that the disclosure of the information in the economic offences under the investigation in the said organization would impede the process of investigation or apprehension or prosecution of offenders;
> And whereas Section 8(1) of the Right to Information Act, 2005 (No. 22 of 2005) provides for exemption from disclosure of information on certain grounds, whereas clause (g) provides that information, the disclosure of which would endanger the life of physical safety of any person or identify the source of information, and clause (h) provides that information which would impede the process of investigation or apprehension or prosecution of offenders shall be denied to any citizen;
> Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 24 of the said Act, the State Government, hereby specify that the provisions of the said Act shall not apply with respect to the cases under investigation by the following organizations:-
> 1. Madhya Pradesh Special Police Establishment of Lokayukta Organization.
> 2. State Bureau of Investigation of Economic Offences."

SPE whether an 'intelligence' and 'security' Organization

17. It would now be necessary to consider whether the SPE is an

'intelligence' and 'security' organisation. For this purpose, relevant provisions of the Act of 1981 may be noticed. The Statement of Objects and Reasons behind enacting the Act of 1981 reads as under:

> "Statement of Objects and Reasons
>
> Currently there is no mechanism in place to investigate into allegations of corruption, etc., against high ranking individuals such as the Chief Minister, other elected officials and senior officers under the control of the State Government and in order to maintain ethical standards in public life, there has been a need since long time to establish an independent mechanism for this purpose. Therefore, this Bill has been formulated to establish such a mechanism.
>
> Hence, this Bill is presented.
>
> Bhopal:
>
> Date : 19 September 1980.
>
> Arjun Singh
> Member-in-Charge
>
> Recommended by His Excellency the Governor under Article 207 of the Constitution of India."

The Statement of Objects and Reasons indicates the absence of a mechanism to investigate into allegations of corruption against high ranking individuals and the need to establish such independent mechanism. The preamble of the Act of 1981 reads as under:

> "An Act to make provision for the appointment and functions of certain authorities for the enquiry into the allegations against [public servants] *[Substituted by M.P.Act No.1 of 1987 (w.e.f. 9-1-1987).]* and for matters connected therewith."

Section 2(b) defines the expression 'allegation' which reads as under:

"2. Definitions – In this Act, unless the context otherwise requires,-
(b) "allegation" in relation to a public servant means any affirmation that such public servant,-

(i) has abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue harm to any person;

(ii) was actuated in the discharge of his functions as such public servant by improper or corrupt motives;

(iii) is guilty of corruption; or

(iv) is in possession of pecuniary resources or property disproportionate to his known source of income and such pecuniary resources or property is held by the public servant personally or by any member of his family or by some other person on his behalf.

Explanation:– For the purpose of this sub-clause "family" means husband, wife, sons and unmarried daughters living jointly with him;"

Section 7 of the Act of 1981 specifies the matters that may be enquired into by the Lokayukt or Up-Lokayukt. Section 7 reads as under:

"[14] [7. Matters which may be enquired into by Lokayukt or Up-Lokayukt-Subject to the provision of this Act, on receiving complaint or other information-

(i) the Lokayukt may proceed to enquire into an allegation made against a public servant in relation to whom the Chief Minister is the competent authority;

(ii) the Up-Lokayukt may proceed to enquire into an allegation made against any public servant other than referred to in clause(i):

Provided that the Lokayukt may enquire into an allegation made against any public servant referred to in clause (ii).]

[15][*Explanation*. – For the purposes of this section the expressions "may proceed to enquire", and "may enquire," include investigation by police agency put at the disposal of Lokayukt and Up-Lokayukt in pursuance of sub-section (3) of section 13.]"

18. The official website of Lokayukt Organisation, Madhya

[14] Subs. by M.P. Act No.7 of 1982 (w.e.f. 28-1-1982)
[15] Ins. By M.P. Act No.20 of 1984 (w.e.f. 16-5-1984)

Pradesh at *mplokayukt.nic.in* gives the following information:

"About Lokayukt Organization

> The Lokayuykt Organization in Madhya Pradesh came into existence in Feb.1982 after the Madhya Pradesh Lokayuykt and Up-Lokayukt Act, 1981 (hereinafter called the Act) was enacted by the State Legislature. Attempt to establish an independent Organization on the lines of "Ombudsman" started way back in mid 70's after the State Administrative Reforms Commission recommended that the State Vigilance Commission, which was then functioning as an instrument to prevent/check corruption should be replaced by an organization with statutory base and powers. Examining the role and limitations of the State Vigilance Commission, the ARC had observed that in the absence of a constitutional or even statutory recognition of its position, the Vigilance Commission might act at best as a department of the Government to check corruption. In view of the above observations of the ARC and on the basis of various recommendations received from the Government of India, a bill was moved in the M.P. Legislative Assembly in the year 1975 which was sent for President's assent after its passage by the Assembly. But due to certain rethinking at the level of the Union Government the bill was returned to the State Government for reconsideration and the same was passed in April 1981 with certain modifications. The bill so passed became the Act after it received the Presidential assent in September 1981.
>
> The Lokayukt Organization constituted under the Act replaced the Vigilance Commission. Having received the statutory base the Lokayukt Organization is totally free from the executive influence. Indeed, the organization functions as an instrument of control over the executive by the legislature as its annual reports are submitted to the Governor to be laid and discussed in the State Legislative Assembly."

Thus, even the Lokayukt Organisation states that it is an organisation that functions to prevent/check corruption. We may also refer to Section 63 of the Lokpal and Lokayuktas Act, 2013 which reads as under:

> "**63. Establishment of Lokayukta.**—Every State shall establish a body to be known as the Lokayukta for the State, if not so established, constituted or appointed, by a law made by the State Legislature, to deal with complaints relating to corruption against certain public functionaries, within a period of one year from the date of commencement of this Act."

Though this is a later central legislation, it is indicative of the fact that the Lokayukt of a State is a body to deal only with complaints relating to corruption against certain public functionaries.

19. The SPE has been established and constituted pursuant to the power conferred by Section 2(1) of the Act of 1947. The purpose behind its constitution is the investigation of offences notified under Section 3 of the Act of 1947. Notification dated 01.11.1959 by which the SPE was constituted reads as under:

> "the lst November 1959-Kartika 10, 1881
> NOTIFICATION
> No. 111-89-I(VI) 59.-In exercise of the powers conferred by sub-section (1) of section 2 of the Madhya Pradesh Special Police Establishment Act, 1947 (XVII of 1947), the State Government hereby constitutes a special police force to be called the Madhya Pradesh Special Police Establishment for the investigation of offences which may from time to time be specified under section 3 of the said Act."

Section 3 of the Act of 1947 empowers the State Government to specify the offences that can be investigated by the SPE. It reads as under:

> "3. Offences to be investigated by special police establishment:- The State Government may, by notification, specify the offences or classes of offences which are to be investigated by [Madhya Pradesh][16] Special Police Establishment."

On 01.11.1959, another Notification was issued under Section 3 of the Act of 1947 specifying the offences that could be

[16] Subs. By A.O. 1950, for Central Provinces and Berar

investigated by the SPE. The same reads as under:

> "No. 113.89-I(VI)-59.-In exercise of the powers conferred by section 3 of the Madhya Pradesh Special Police Establishment Act, 1947 (XVIÍ of 1947), the State Government hereby specifies the following to be the offences or classes of offences which are to be investigated by the Madhya Pradesh Special Police Establishment, namely:-
>
> (a) offences punishable under sections 161, 165 and 165-A of the Indian Penal Code, 1860 (XLV of 1860) ;
>
> (b) offences punishable under the Prevention of Corruption Act, 1947 (II of 1947) ;
>
> (c) offences under sections 409 and 420 and Chapter XVIII of the Indian Penal Code, when they are committed, attempted or abetted by public servants or the employees of a local authority or a statutory corporation, when such offences adversely affect the interests of the State Government or the local authority or the statutory corporation, as the case may be ; and
>
> (d) attempts, abetment and conspiracies in respect of offences mentioned in items (a) and (b) above, by whomsoever committed."

The subsequent Notification dated 28.11.1989 issued under Section 3 of the Act of 1947 reads as under:

> "Bhopal, the 28th November 1989
>
> No.F.15-2(I)-89-XLIC-10.- In Exercise of the powers conferred by Section 3 of the Madhya Pradesh Special Police Establishment Act, 1947 (XVII of 1947), the State Government hereby specifies the following to be the offences of classes or offences which are to be investigated by the Madhya Pradesh Special Police Establishment, namely :-
>
> a) Offences punishable under the Prevention of Corruption Act, 1988 (No.49 of 1988);
> b) Offences under Sections 409 and 420 and Chapter XVIII of the Indian Penal Code, 1860 (XLV of 1860) when are committed, attempted or abetted by public servants or the employees of a local authority or a statutory corporation, when such offences adversely affect the interests of the State Government or the local authority or the status corporation, as the case may be; and
> c) Conspiracies in respect of offences mentioned in items (a) above.
>
> 2. (1) The General Administration Department Notification No.113-89-1 (VI)-59, dated the 1st November, 1959 is hereby repealed.
>
> (2) Notwithstanding such repeal, any investigation or legal proceeding pending on the date of commencement of the prevention of Corruption Act, 1988 (No.49 of 1988) shall be continued as if the repealing Notification had not been issued.

By order and in the name of the Governor of Madhya Pradesh."

Thereafter, on 14.09.2000 the earlier Notification dated 28.11.1989 was superseded and a fresh Notification was published in the Official Gazette. The Notification dated 14.09.2000 reads as under:

> "Notification No.F.15(1)(1)-2000-I-10 dated the 14th September, 2000.-In exercise of the powers conferred by Section 3 of the Madhya Pradesh Special Police Establishment Act, 1947 (No.17 of 1947) and in supersession of this Department Notification No.15(2)(1) 89-1-49-10 dated the 28th November, 1989, the State Government, hereby specify the following offences to be the offences of class of offences which are to be investigated by the Madhya Pradesh Special Police Establishment, namely :-
>
> (a) Offences punishable under the Prevention of Corruption Act, 1988 (No.49 of 1988) :
>
> (b) Offences under Section 409 and 420 and Chapter XVIII of the Indian Penal Code, 1860 (No.XLV of 1860) when they are committed, attempted or abetted by Public Servants or employees of a local authority or a statutory corporation, when such offences adversely affect the interests of the State Government or the local authority or the statutory corporation, as the case may be;
>
> (c) Conspiracies in respect of offences mentioned in item (a) and (b) above ; and
>
> (d) Conspiracies in respect of offences mentioned in item (a) and (b) shall be charged with simultaneously in one trial under the provisions of Criminal Procedure Code, 1973 (No.2 of 1974).
>
> *[Published in M.P. Rajpatra (Asadharan) dated 14-9-2000 Pages 1099-1100]"*

Yet again on 03.05.2001, the GAD issued a fresh Notification after superseding the earlier Notification dated 14.09.2000. The Notification dated 03.05.2001 reads as under:

> "No.15-(1)-(1)-2000-I-10.- In exercise of powers conferred by Section 3 of the Madhya Pradesh Special Police Establishment Act, 1947 (No.17 of 1947) and in supersession of this Department Notification No.15-(1)-(1)-2000-I-10, dated 14th September, 2000, The State Government hereby specify the following offences to be the

offences or class of offences which are to be investigated by the Madhya Pradesh Special Police Establishment namely :

(a) Offences punishable under the Prevention of Corruption Act, 1988 (No.49 of 1988) ;

(b) Offences under Section 409 and 420 and Chapter XVIII of the Indian Penal Code, 1860 (No.XLV of 1860) when they are committed, attempted or abetted by Public Servants or employees of a local authority or a statutory corporation, when such offences adversely affect the interest of the Government or the local authority or the statutory corporation, as the case may be ;

(c) Conspiracies in respect of offences mentioned in item (a) and (b), above, and ;

(d) Conspiracies in respect of offences mentioned in item (a), (b) and (c) shall be charged with simultaneously in one trial under the provisions of Criminal Procedure Code, 1973 (No.2 of 1974)."

20. From the Notification dated 03.05.2001, it becomes clear that offences under the Act of 1988 as well as offences under Sections 409, 420 and Chapter XVIII of the Indian Penal Code, 1860[17] committed or attempted or abetted by public servants or employees of a local authority or a statutory corporation adversely affecting the interest of the Government or a local authority or a statutory corporation, as the case may be, have to be investigated by the SPE. Conspiracies in respect of aforesaid offences are also to be investigated by the SPE. Thus, offences or classes of offences to be investigated by the SPE are limited to those punishable under the Act of 1988 and under Sections 409, 420 and Chapter XVIII of the Penal Code. The Act of 1988 seeks to prevent corruption involving public servants. Section 409 of the Penal Code provides

[17] For short, 'the Penal Code'

for punishment for criminal breach of trust by a public servant or by a banker, merchant or agent while Section 420 provides for punishment for cheating and dishonestly inducing delivery of property. Chapter XVIII of the Penal Code relates to offences concerning documents and property marks. Considering the nature of offences covered by the aforesaid provisions, the jurisdiction of the SPE is clearly limited. This is for the reason that under the Act of 1981, the Lokayukt has been conferred a limited jurisdiction to enquire into an 'allegation' as defined by Section 2(b) when made against a public servant. It is, thus, clear that insofar as issues of 'intelligence' and 'security' are concerned, neither the Lokayukt nor the Up-Lokayukt under the Act of 1981 has been conferred jurisdiction to make any enquiry. The various Notifications issued by the State Government under Section 3 of the Act of 1947 from time to time are limited to offences punishable under the Act of 1988, Sections 409, 420 and Chapter XVIII of the Penal Code. Though Section 24(4) of the Act of 2005 states that the Act would apply to such 'intelligence and security organisations' established by the State Government as notified, the SPE though established by the State Government, it is not empowered to investigate any offences or classes of offences related to 'intelligence' and 'security'. The sphere of operation of the SPE

constituted under the Act of 1947 would be governed and guided only by matters that may be enquired into by the Lokayukt or Up-Lokayukt under Section 7 of the Act of 1981. The jurisdiction, in that sense, is limited to an allegation in relation to a public servant in the context of the Act of 1988. The statutory scheme under which the SPE stands constituted coupled with the jurisdiction conferred on the Lokayukt or Up-Lokayukt clearly indicate that the SPE cannot be termed to be an 'intelligence and security' organisation when it assists the Lokayukt or Up-Lokayukt in matters specified by Section 7 of the Act of 1981.

21. We may note that the Allahabad High Court in **Dr.Nutan Thakur vs State of U.P., through Principal Secretary, Department of Vigilance**[18] considered the validity of Notification dated 03.08.2012 issued by the Principal Secretary Vigilance, Government of U.P. through which the Lokayukt agency was brought out of the purview of the Act of 2005 in view of Section 24(4) of that Act. After considering the matter in detail, it was found that the office of the Lokayukt had been constituted in view of the U. P. Lokayukt and Up-Lokayukt Act, 1975[19]. It was mainly concerned with the issue of corruption of public servants as

[18] Misc. Case No.1748 of 2013 decided on 02.11.2017
[19] For short, 'the Act of 1975'

defined under the Act of 1975. In the context of Section 24(4) of the Act of 2005, it was held that the office of Lokayukt was not concerned with the issues of 'intelligence and security'. It was, thus, held that the Notification dated 03.08.2012 issued by the State Government by which the office of Lokayukt and Up-Lokayukt was sought to be brought out of the purview of the Act of 2005 was illegal and it travelled beyond the provisions of Section 24(4) of the Act of 2005.

Conclusion

22. Thus, having considered the entire matter, we are of the considered opinion that the Notification dated 25.08.2011 issued by the GAD of the State of Madhya Pradesh to the extent it seeks to exclude the SPE from the purview of the Act of 2005 in view of Section 24(4) thereof is liable to be set aside as being bad in law as it provides for matters not enumerated under Section 7 of the Act of 1947. The SPE having been conferred jurisdiction only to investigate offences punishable under the Act of 1988, Sections 409, 420 and Chapter XVIII of the Penal Code, it cannot be termed to be an 'intelligence and security' organisation for the purposes of Section 24(4) of the Act of 2005. The Notification dated 28.05.2011 does not conform to Section 24(4) of the Act of 2005 and is, thus, excessive in nature.

Thus, while maintaining the judgment of the High Court dated 20.12.2021 in W.P. No.1575 of 2021, the Notification dated 25.08.2011 issued by the GAD seeking to exclude the SPE from the applicability of the provisions of the Act of 2005 is struck down. It is clarified that we have not examined the applicability of the said Notification vis-a-vis the State Bureau of Investigation of Economic Offences and therefore, the said Notification shall continue to operate to that extent.

Subject to aforesaid, the Criminal Appeal is dismissed. Pending interlocutory applications are also disposed of.

.....J.
[J.K. MAHESHWARI]

.....J.
[ATUL S. CHANDURKAR]

NEW DELHI,
JUNE 15, 2026.