IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. NO. _____ OF 2021

IN

ORIGINAL SUIT NO. 4 OF 2021

IN THE MATTER OF:

STATE OF WEST BENGAL	**...**	**PETITIONER**
	VS.	
UNION OF INDIA	**...**	**DEFENDANT**

REPLY AFFIDAVIT TO THE APPLICATION FOR INTERIM RELIEFS

I, Rahul Singh, s/o Sachchida Nand Singh, aged 50 Years, working as Joint Secretary, Department of Personnel and Training, Government of India, do hereby solemnly affirm and state as follows:

1. That this Reply Affidavit to the Application for interim Relief is being filed by the undersigned in compliance to the direction of the Hon'ble Court during the hearing in this matter held on 04.10.2021.

2. That in my official capacity I am acquainted with the facts of the case, I have perused the record and am competent and authorized to swear this affidavit on behalf of the Union of India, Defendant No. 1. I have also checked up the record pertaining to the subject matter of the suit and have thereby, acquainted myself about the facts mentioned herein.

3. That the contents of the present Application filed by the Plaintiff have been read over to me and I have understood the contents thereof, save and

except what is specifically admitted herein, no part in the present Application or the appended Original Suit, which is not expressly dealt with, shall be deemed to be admitted and I crave leave to file a detailed reply hereafter individually dealing with the paragraphs of the suit and application.

4. I hereby deny and dispute all the facts stated, contentions raised and grounds urged in the present Application or the appended Original Suit except those which are specifically and unequivocally admitted in this reply. It is stated that as stated above since this reply is confined to the Application seeking interim relief, this reply may not be treated as written statement under Oder XXVIII contained in Part III of Supreme Court Rules, 2013. The defendant reserves liberty to file a written statement conforming to Rule 1 to 6 contained in Order XXVIII contained in Part III of the Supreme Court Rules, 2013.

5. I deny the facts mentioned in the suit as well as interim application. I reserve my right to make a suitable application for examination of Sh. Nirmalya Ghoshal, Addl. Secretary, Home and Hill Affairs. The defendant will file a suitable Application calling upon the said deponent for being examined as a witness.

6. The present suit is not maintainable as it is barred by several provisions of the Code of Civil Procedure and, therefore, the defendant reserves its rights to move an appropriate Application under Order XXVI Rule 6 contained in the Supreme Court Rules, 2013 while filing its written statement.

7. This affidavit may also be treated as an Application seeking additional time of eight weeks to file written statement to the main suit. This Hon'ble Court may be pleased to grant eight more weeks to the defendant.

Preliminary Submissions

8. The suit filed under Article 131 of the Constitution is liable to be dismissed for non-joinder of parties and if so, the application, I.A. No. 105458/2021 would follow suit.

9. That the only defendant in the suit is the Union of India represented by Secretary, Department of Personnel & Training. The prayers in the suit are as follows:

"

i. *Pass a Judgment and Decree declaring that registration of cases by the Defendant after withdrawal of Notification under S. 6 of the DSPE Act by the plaintiff is unconstitutional and non-est;*
ii. ***Pass judgment and decree thereby restraining and forbearing the Defendant from registering*** *any case and/or investigating a case in connection with offences committed within the territory of the State of West Bengal after withdrawal of the consent under Section 6 of the DSPE Act by the State;*
iii. ***Pass a Judgment and Decree that the action of the Defendant in registering cases*** *after withdrawal of Notification under Section 6 of the DSPE Act by the Plaintiff is violative of Constitution of India as well as violative of the basic structure of the Constitution and the principle of federalism;*
iv. ***Pass a Judgment and Decree thereby quashing all cases registered by the Defendant*** *after withdrawal of Notification under Section 6 of the DSPE Act by the Plaintiff and transmit those records to the Plaintiff for registration of regular cases by the police force of the Plaintiff and transmit those records to the Plaintiff for registration of regular cases by the police force of the Plaintiff;*
v. ***Ad-interim order restraining the Defendant*** *from proceeding with any investigation on an FIR and any proceeding arising therefore, registered after November 16,208 when the consent under Section 6 of the DSPE Act was withdrawn by the Plaintiff, other than investigation with*

respect to an FIR filed/registered on an order of a competent court of law…"

(emphasis supplied)

10. It is submitted that the Union of India has not registered any case in the State of West Bengal, nor has it been investigating any case. Yet, as is evident from the prayers extracted above, each and every prayer in the present suit is directed either towards restraining the Union of India from investigating any case or towards quashing cases where the Union of India has allegedly registered FIRs. On the other hand, it is the Central Bureau of Investigation (hereinafter "**the CBI**") which has registered FIRs and investigated cases, but strangely, the CBI is not made a party to the suit.

11. It is the Central Vigilance Commission (hereinafter "the CVC") which under Section 8 of the Central Vigilance Commission Act, 2003 under Section 8 exercises superintendence over the functioning over the Delhi Special Police Establishment (insofar as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act,1988). Under Section 8(1)(b) of the Act, the CVC can give directions to the Delhi Special Police Establishment (i.e, the CBI) for the purpose of discharging the responsibilities entrusted to it. Furthermore, under the proviso to Section 8 (1)(b) "*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*." Thus, it is clear that the autonomy of the CBI is statutorily maintained and cannot be interfered with even by the Central Government in regard to the manner in which the CBI investigates a case.

12. Being autonomous in regard to its functions in investigating FIRs and investigating cases, the CBI obviously is a necessary and essential party to the suit. However, in light of the fact that in terms of Article 131 of the

Constitution of India, the dispute has to be between the Government of India and one or more States, or between States, the Plaintiff has used a device by which it excludes the real defendant and substitutes the Central Government, which has not done anyone of the Acts sought to be prevented by the prayers in the suit.

13. The suit therefore filed against the Union of India, in a matter where the CBI is the real party which has done the acts sought to be prevented, is not maintainable and is therefore to be dismissed without any further inquiry. If that is so, equally the interlocutory application filed by the Plaintiff has also to be dismissed.

14. It is submitted that Section 6 of the Delhi Special Police Establishment Act (hereinafter "the DSPE") read with Entry 80 of List I which is the source of the power is not absolute in its terms. The Union List, i.e. List I, sets out a large number of entries including Defence of India (Entry 1), Naval, military and air force works (Entry 4), Arms, firearms, ammunition and explosives (Entry 5), Atomic energy and mineral resources (Entry 6), as well as among others, Duties of customs including export duties (Entry 83), Duties of excise (Entry 84) and so on. Each one of the Acts passed in relation to these entries contains offences. The legislative competence of the Union with regard to offences in relation to these entries is set out explicitly in Entry 93, which deals with "*Offences against laws with respect to any of the matters in this List.*"

15. The State List, i.e. List II, contains Entry 64 which deals with "*Offences against laws with respect to any of the matters in this List.*" This would mean that offences against laws with respect to List I are beyond the legislative competence of the State, and under Article 162 of the Constitution, the executive power of the state is co-extensive with its legislative power, and

shall extend to the matters with respect to which the legislature of the State has power to make laws. Entry I of the Concurrent List deals with, "*Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union*" The combined result of a reading of these provisions would show that the only authority which can investigate offenses arising from List I laws would be the police forces or investigative agencies of the Union of India. The DSPE Act sets up such a force.

16. In other words, the consent which is referred to in Entry 80 of List I and Section 6 of the DSPE Act is limited to the offences under List II, since no entry exists in List III for creating offences in relation to the matters in List III, except to the extent covered by Entry 1, List III which expressly excludes offences against laws in respect of any of the matters in List I and List II.

17. The suit is filed by proceeding on the basis that the power to withhold consent is absolute. This certainly cannot be so for the reasons pointed out above. The result of this discussion is that the CBI is entitled to investigate all offences relatable to the entries in List 1, where laws made under those entries create offences. In addition thereto, it is always open to the Superior Courts to direct such permission in select cases where it is found that the State Police would not effectively conduct a fair and impartial investigation. As a result, each one of the FIRs would have to be scrutinized separately for tracing it to the law under which the FIR is registered and the Entry in Schedule 7 to which the law relates.

18. That the present reply at para 45 sets out the list of twelve cases which were being investigated by the CBI. These twelve cases can be divided into (i) cases involving acts of corruption under the Prevention of Corruption Act by public servants belonging to the Central Government, (ii) cases where the High Court has directed the CBI to investigate matters which have been held not to attract Section 6 of the DSPE Act, by reason of the judgment in ***State of West Bengal v. Committee for Protection of Democratic Rights*** **(2010) 3 SCC 571** or ***Kazi Lhendup Dorji v. CBI*** **(1994) Supp. (2) SCC 116** and (iii) cases where offences other than prevention of corruption act offences have been committed by the Central Government employees. All these would be traceable to laws made by Parliament. Thus, in terms of what has been stated earlier, the State Government would neither have competence to use its police force to investigate these offences, nor can the State Government withdraw a consent which was inapplicable to the investigation of these offences arising out of List I laws.

19. The question is as to whether the State Government and its police could investigate offences arising under List I laws if committed within the territory of that State. If the State Government cannot do so with regard to these matters, surely, Entry 80 of List I of the DSPE Act would have to be read consistently with the other provisions of the Constitution. The consequence would otherwise be that a vacuum would exist under which there is no authority that could investigate those offences under the Central Acts. Hence the withdrawal of consent by the State Government would have no effect on the offences involved.

20. From this it follows that the claim of the State of West Bengal that it has the competence to undertake a blanket withdrawal of all powers of investigation from the CBI is without substance.

Preliminary Objections

21. Without prejudice to the above, and in addition to the above, the present Application as well as the Suit deserves to be dismissed on the ground of :

(i) Deliberate and wilful suppression of most material facts for adjudication of the Suit; and / or

(ii) Non-disclosure of specific cause of action.

22. That the facts narrated in this reply will show that the deponent has deliberately and wilfully suppressed several facts which are most material, in absence of which prayers prayed for can either not be decreed or will run contrary to judicial orders in existence. It may be noted that even as per the verification of Original Suit at Page 20-21 of the Plaint, the deponent has failed to verify that the "*nothing material has been concealed there from*" in the suit.

23. It is respectfully submitted that while praying for decree of this Hon'ble Court, it is incumbent upon the State Government [which is always expected to be a virtuous litigant with higher threshold] to disclose that any relief granted in the suit and / or interim order would run contrary to the judicial orders passed by the constitutional courts with respect to the very same FIRs which are made subject matter of the suit as well as this Application.

24. That the defendant, therefore, prays that the present Application as well as the suit be dismissed on the preliminary ground that the basic facts are neither disclosed nor even indicated which would constitute a cause of action. It is respectfully submitted that the Original Suit and the interim application are drawn and filed on 17.8.2021 along with a List of Documents containing the withdrawal of consent by the Plaintiff and the FIRs registered

by the Central Bureau of Investigation [hereinafter referred to as "**the CBI**"]. It is stated that after the filing of the said suit, a separate Application for Additional Documents along with a separate a list of documents is filed subsequently dated on 06.09.2021.

25. It is stated that Order XXVI Rule 9, 10, 11 and 12, it is incumbent upon the plaintiff to place and produce before the Registrar all the documents on which the reliance is placed "when the plaint is presented" and must be delivered "with the plaint". It is stated that the filing of the plaint with suppression of facts and thereafter surreptitiously filing documents without giving any facts, details, significance and their impact on the prayers prayed for, is not only not maintainable but is a conduct disentitling the plaint to get any relief in the suit and the Application, therefore, deserves to be dismissed on the ground of non-disclosure of material facts and non-compliance of mandatory provisions contained in Order XXVI of Supreme Court Rules, 2013.

26. It is respectfully stated and submitted that as per the mandate of provisions contained in Part III of the Supreme Court Rules, there is impossibility of joinder of several causes of action.

27. The facts narrated hereunder [which are deliberately and wilfully suppressed by the plaintiff] would show that the plaintiff, while not disclosing several causes of action, has sought to pray for an omnibus decree / interim order and has attempted to join several causes of action.

28. The present suit and the Application, therefore, deserves to be dismissed on the ground of misjoinder of causes of action which makes it impossible to try and dispose of the suit having multiple causes of action.

29. It is a settled position in law of pleadings that in all original trials the plaint can only contain the particulars which are enumerated in Order

XXVIII Rule 4 of the Rules. There is a separate Chapter under the heading "*Pleadings Generally'* wherein under Order XXIX Rule 2 reads as under:-

> *"2. Every pleading shall contain, and contain only, a statement in a concise form of the material facts on. which the pony pleading relies, but not the evidence by which those facts are to be proved, nor any argumentative manner, and shall be divided into paragraphs numbered consecutively"*

30. The plaint has made argumentative pleadings and cited law on the subject clearly to hide the suppression of material facts. The present suit and the Application deserves to be dismissed for non-compliance of mandatory requirements of Order XIX Rule 2 of Supreme Court Rules, 2013.

31. The facts narrated hereunder would show that while denying the facts that an investigation by the agency constituted under DPSE Act cannot be undertaken without the consent of the plaintiff; one fact is clear that no such investigation, wherein there is any breach of the federal principle, has commenced or any FIR is registered after 16.11.2018 by the CBI. As pointed out hereunder, the facts which are deliberately and wilfully suppressed by the plaintiff lead to show that the plaintiff is estopped from perusing the present suit and / or application in view of the doctrine of *res-subjudice*.

32. It is respectfully submitted that as pointed out hereunder and as deliberately suppressed by the plaintiff, the issues mentioned in the present suit / application are already adjudicated and / or are under adjudication of the competent constitutional courts. Any order passed either in the Application or suit or any decree being issued would inevitably in conflict with the relief/s granted and / or prayed for in parallel proceedings with regard to the very same subject matter which is the subject matter of the present suit. In that view of the matter in the respectful submission of the defendant, not only the relief prayed for in interim application and / or

decree prayed for in the suit deserves to be rejected, the plaint and the application deserves to be dismissed as having been barred by the doctrine of *res-subjudice*, which in respectful submission of the deponent is an extension of the mandatory requirement of cause of action.

33. The applicant craves leave to seek dismissal of the present application on the above grounds and reserves liberty to move Application for dismissal of the suit on either of the above referred or an any other grounds.

34. It is respectfully submitted that there are several offences which have been entrusted to the CBI by the constitutional courts in the list of FIRs submitted by the Plaintiff at Page 10 Paragraph 21 of the Original Suit. It is submitted that even the said facts of entrustment of investigation by constitutional courts to the CBI have been suppressed by the Plaintiff. It is stated that the Plaintiff was aware of such entrustment of investigation by the constitutional courts and despite the same, has deliberately sought to supress this material, relevant and critically necessary information in the plaint.

35. That there are numerous investigations which are being carried out against Central Government employees or have either pan-India impact or impact on more than one States for the purpose of conducting investigation into such offences. It is always desirable and in the larger interest of justice that the central agency conducts the investigation in such cases. In the event of offence being committed by a Central Government employee or an offence having multi-State or pan-India implication, an investigation made by the central agency would not harm or affect the federal structure or take away the right of the State Government to investigate offences within the State's jurisdiction. As per the facts narrated hereunder, the consent of the State Government was sought for some of such offences. It is not understood

as to why the State Government came in the way of such investigation which would have an inevitable effect of shielding those who are guilty of such multi-State / pan-India offences.

36. That the power of the State Government to give consent for an investigation by the CBI, cannot and would not include a right of an omnibus power, to pass over-arching sweeping directions not to grant consent in any case and / or withdraw the consent already granted. From the very nature of such power, it can be validly exercised only on a case-to-case basis and for good, sufficient and germane reasons to be recorded by the State Government. The power to take a decision not to grant consent in any case to the Central agency and / or power to pass a sweeping order withdrawing consent in all cases is an ultra vires exercise of power and is non-est. A statutory power conferred upon the State Government under section 6 is always coupled with a responsibility to exercise that power on a case-to-case basis with an inbuilt condition of exercising the same in larger public interest and not to shield any accused or purely on political considerations. The very establishment of a central police force for taking up certain sensitive cases and cases of multi-State / pan-India implication mandates the State Government to exercise the power to grant / refuse consent only on a case-to-case basis and for good, sufficient and germane reasons to be recorded.

37. The defendant calls upon the plaintiff to produce before this Hon'ble Court the procedure followed and the reasons, if any, recorded by the State Government while passing an order dated 16.11.2018 which appears to be an omnibus order de hors the effects of any particular case. The said order is at page 12 document 4 of the list of documents filed with suit which, on the face of it, reflects an omnibus exercise of power without application of mind and recording of reasons. Unless the plaintiff places the file notings which

culminated into the order dated 16.11.2018 and satisfies this Hon'ble Court about its validity, the plaintiff is not entitled to pray for any relief.

38. It is submitted that as pointed out all facts are deliberately and purposefully misleading, and further have been suppressed by the Plaintiff despite the fact that the Plaintiff was a party to the proceedings relating to investigation/s in which the Plaintiff seeks to interfere and seek a stay by way of prayer in the present proceedings. The Plaintiff has in these proceedings, actively argued essentially in favour of the accused persons however, the Hon'ble Courts have ruled against the propositions canvassed.

39. It is stated that one such startling example is RC No. 0102020A0022 dated 27.11.2020 which is annexed as Document 12 to the List of Documents at Page 43-50. While seeking stay, inter alia, against the investigation in the said FIR, the following facts have been suppressed :

(a) The accused Anup Majee who is running a multi-State racket of pilferage, smuggling and sale of scarce natural resources i.e. coal from the Central Government owned coal mines through Railways had already challenged the said FIR before the Hon'ble Kolkata High Court. The Ld. Single Judge passed an order in favour of the said accused against which the Division Bench of Kolkata High Court interfered and stayed the order of the Single Judge resulting in the continuance of CBI investigation. Against the said order, the accused as well as the State of West Bengal have filed SLP [Crl.] No. 1620-1621 of 2021 and 2076 of 2021 before this Hon'ble Court which is pending and there is no stay against the investigation.

(b) It is submitted that it is stated on Affidavit that by way of pleadings in the said SLPs that the Central Vigilance Commission was approached by the victim of the crime namely Eastern Coalfields Limited in pursuance of which the Commission had passed an order dated

22.8.2021 under section 8 of the CVC Act directing the CBI to continue investigation under its supervision. Suppressing this critical fact, the Plaintiff has prayed for stay of investigations, inter alia, of this investigation also while being fully aware of the fact and being fully cognizant that any order passed in the present suit / application would stay the order of the CVC and would be adverse to Eastern Coalfields Limited which has not joined as a party to the suit.

(c) It is submitted that since the offence, which is the subject matter of the said FIR, has ramifications in West Bengal, Uttar Pradesh, Jharkhand and other States – one FIR was registered being FIR No.70 of 2021 dated 28.2.2021 at Mughal Sarai PS, District Chandoli pertaining to the very same subject matter, the State of Uttar Pradesh considering the multi-State repercussions of the said FIR and since the subject matter of the offence is coal which is a national asset, granted the consent under which the CBI has taken over the investigation of the said offence also. These facts are also pointed out on Affidavit much before the suit was filed. The plaintiff State of West Bengal, therefore, is aware that any interim order prayed for, if passed, would have a direct impact on the said investigation has suppressed the said crucial fact.

40. It respectfully submitted that considering the nature of the suppressed impossibility of the plaintiff being in a position to plead ignorance of the fact being suppressed and the prayers, if granted, having an impact on parallel proceedings. Such suppressions are required to be taken very seriously and the plaint as well as the interim order deserves to be rejected only on this ground.

41. That in this regard, it may be noted that the Hon'ble High Court of Calcutta has pronounced the following judgments/order after 16.11.2018

deciding the legality of the registration of the FIRs by the Central Bureau of Investigation. It is submitted that the Plaintiff is a party and is being heard/was heard in the said cases. The following is a table of the said judgments/order :

Sr. No.	Particulars / Details	Date of order
1.	Ramesh Chandra Singh v. Union of India - CRR No. 910/2019	12.03.2020
2.	The Central Bureau of Investigation Vs. Anup Majee and Others - MAT No.158 of 2021 with CAN No. 1 of 2021	12.02.2021
3.	Vinay Mishra -vs.- The Central Bureau of Investigation & Ors - C.R.R. 810 of 2021 with IA NO. CRAN 1 of 2021	28.07.2021
4.	Ratnesh Verma -vs.- Central Bureau of Investigation & Anr. - C.R.R. 1270 of 2021	28.07.2021
5.	Vinay Mishra -vs.- The Central Bureau of Investigation & Ors. - C.R.R. 1349 of 2021	28.07.2021

42. It is stated that the appeals/special leave petitions against the above stated orders/judgments of the Hon'ble High Court of Calcutta are pending adjudication before this Hon'ble Court. It is submitted that the Plaintiff is a party to the said Special Leave Petition. It is submitted that the *lis* or the cause of action between the parties, is identical to the cause of action purported to be raised by the Plaintiff in the present Application and the Original Suit. It is submitted that the following petition are pending adjudication before this Hon'ble Court and have been listed for final arguments, after completion of pleadings, on 16th November, 2021 :

1. SLP(Crl) No. 1620-1621/2021 Anup Majee Versus The Central Bureau Of Investigation And Ors.,
2. SLP(Crl) No. 6191/2021 Vinay Mishra Versus The Central Bureau Of Investigation And Ors.,
3. SLP(Crl) No. 6405/2021 Vinay Mishra Versus The Central Bureau Of Investigation And Ors.,
4. SLP(Crl) No. 1787/2021 Anup Majee Versus The Central Bureau Of Investigation And Ors.,
5. SLP(Crl) No. 2076/2021 The State Of West Bengal And Co. Versus Anup Majee And Ors.,
6. Diary No. 6765-2021 Eastern Coalfields Limited Versus Anup Majee And Ors.

43. It is submitted that I have been advised to raise a contention that the present suit and the proceedings thereto are barred under Section 10 of Code of Civil Procedure [hereinafter referred to as "**the CPC**"] and other provisions of the CPC.

44. It is submitted that further it is undeniable that despite the federal principles of the Constitution, the unitary bias of Constitution is well recognized. It is submitted that from a combined reading of the Constitution, the relevant entries in the List I, List II and List III, the DPSE Act and the relevant precedents of this Hon'ble Court, it cannot be stated that there is a complete embargo on any investigation by the Delhi Special Police in all situations irrespective of the factual situation. It is submitted that the demarcation of the investigative fields of the Plaintiff and the CBI would depend on the facts and circumstances of every First Information Report and the same cannot be adjudicated *en banc*.

45. It is stated that further, the following table illustrates that the subject matter of the FIRs mentioned by the Plaintiff and annexed in the List of Documents is clearly within the domain of the CBI to investigate :

Sl No.	Case No. & Date of Registration	Name of the accused	Brief allegation	Grounds for Registration
1	RC0102018A00011 17.11.2018	Shri Snehasish Kar, working as Upper Division Clerk (UDC) in the Office of Additional Director, Central Government Health Scheme (CGHS),	The accused during the check period 01.04.2011 to 25.10.2018 was in possession of assets to the tune of Rs. 54,73,956/- which was disproportionate to his known sources of income.	The notification dated 16.11.2018 regarding withdrawal of the general consent by the State of West Bengal was received in the CBI Kolkata Office after registration of the instant case on 17.11.2018. As per the order dtd.24.04.2019 of Ld. Special Judge of CBI 3rd Special Court, Bankshall Courts, Kolkata, investigation of this case was stopped. Thereafter, a letter was sent to the Principal Secretary, Home & Hill Affairs Department, Government of West Bengal seeking permission to investigation the case on 9.9.2019, but the permission was not granted. However, after the Judgment dt.28.07.2021 – titled Vinay Mishra -vs.- The Central Bureau of Investigation & Ors - C.R.R. 810 of 2021 with IA NO. CRAN 1 of 2021, the Ld. Special Judge, CBI 3rd Court allowed the investigation to continue. It may be mentioned that in this judgment, it has been held that *"the DSPE Act with its amendments have been restructured for facilitating/enabling the CBI to carry out investigations under the P.C. Act and the withdrawal notification dated 16.11.2018 is abrupt, devoid of any reasons and has the effect of shielding corrupt Central Government Officials, thereby, deterring the*

Sl No.	Case No. & Date of Registration	Name of the accused	Brief allegation	Grounds for Registration
				CBI officers to investigate offences in respect of officers falling within the category of Section 8(2) of the CVC Act, 2003." And "There has been no illegality committed in the ongoing investigation and as such there is no scope for interference in the continuation of investigation relating to RC case No. 19/2020 dated 21.09.2020."
2	RC0102018A00012 19.11.2018	Shri Ramesh Chandra Singh, Assistant Provident Fund Commissioner, O/o the Regional Provident Fund Commissioner, Employees Provident Fund Organization, 44, Park Street, Kolkata.	The accused during the check period 01.04.2012 to 28.06.2018 was in possession of assets to the tune of rs. 56,47,789/- which was disproportionate to his known sources of income.	The notification dated 16.11.2018 regarding withdrawal of the general consent by the State of West Bengal was received in the CBI Kolkata Office after registration of the instant case on 19.11.2018. The accused filed a petition in the Hon'ble High Court at Calcutta for quashing of the FIR on the ground of absence of the consent. The said petition was dismissed by the Order passed in Ramesh Chandra Singh v. Union of India - CRR No. 910/2019 by Hon'ble High Court at Calcutta on 12.03.2020. The case is now under investigation [with a closure report in contemplation]. In this judgment it was held that "*This Court is, therefore, of the view that, the Central Government/CBI's power to investigate and prosecute its own officials cannot be in any way impeded or interfered by the State even if the offenses were committed within the territory of the State.*"

Sl No.	Case No. & Date of Registration	Name of the accused	Brief allegation	Grounds for Registration
3	**RC0562019S004** of CBI/SCB/ Kolkata 23.08.2019	Smt. Priyanka Chowdhury, Sh. Joydeep Cowdhury and Sh. Balaram Chowdhury . Priyanka Choudhury was arrested on 04.01.2021 and was granted statutory bail after a period of 90 days.	Homicide case	This case was registered on the basis of the Order dated 17.05.2019 passed by the Hon'ble High Court at Calcutta in WP No.159(W) of 2013. No question of breach of any fundamental principle of federalism arises in the present case in view of the judgment in ***State of W.B. v. Committee for Protection of Democratic Rights*, (2010) 3 SCC 571.**
4	**RC0562019S005** of CBI/SCB/ Kolkata 30.09.2019	Unknown persons	It was alleged that a letter purportedly issued by the Hon'ble High Court at Calcutta and forwarded through an e-mail.	The case has been registered on the basis of order of Hon'ble High Court at Calcutta communicated by the Registrar General of the High court vide his letter dated 13.06.2019. In compliance of the order dated 13.06.2019 the case was registered to investigate the authenticity of a letter purportedly issued by the Hon'ble High Court Calcutta. No question of breach of any fundamental principle of federalism arises in the present case in view of the judgment in ***State of W.B. v. Committee for Protection of Democratic Rights*, (2010) 3 SCC 571**
5	RC0102020A0018 21.09.2020	Prof. Sushanta Duttagupta, Ex-Vice Chancellor of Viswa Bharati University (dismissed form service)	Prof Sushanta Datta Gupta absued his official position and by illegal means obtained for himself as well as for others pecuniary advantage causing wrongful loss	Based on complaints forwarded by the CVC a PE vide No. 18/(A)/2018-Kol dated 12.07.2018 was registered in this branch. This RC is the outcome of the aforesaid PE which was registered before withdrawal of the consent. In this connection, it may be noted that the same involves a Central Government employee, the PE is prior to the withdrawal of the consent and therefore the

Sl No.	Case No. & Date of Registration	Name of the accused	Brief allegation	Grounds for Registration
			to Govt and wrongful gain to himself and pecuniary advantage to others.	judgment in ***Kazi Lhendup Dorji v. CBI*, 1994 Supp (2) SCC 116**, would apply. In view of the same, the jurisdiction of the CBI cannot be questioned.
6	RC 0102020A 0019 21.09.2020	Shri Satish Kumar, the then Commandant of 36 Battalion, BSF, Malda, West Bengal 2. Md. Enamul Haque (Private Person)	The SO Commandant,(BSF), during the years 2015 to 2017 had an unholy nexus with Md. Enamul Haque and other officials of BSF and unknown officials of Indian Customs and in pursuance thereof, facilitated Md. Enamul Haque in getting possession of cattle seized by BSF at much lower price than the market price by miscategorising the size/breed of cattle so seized.	This Case is an outcome of a PE which commenced on 06.04.2018 much prior to the withdrawal of consent. As the preliminary enquiry revealed cognizable offences, the FIR was registered. In this connection, it may be noted that the same involves a Central Government employee, the PE is prior to the withdrawal of the consent and therefore the judgment in ***Kazi Lhendup Dorji v. CBI*, 1994 Supp (2) SCC 116**, would apply. In view of the same, the jurisdiction of the CBI cannot be questioned.
7	RC010202 0A0020 22.09.202 0	Anil Kumar, the then Scientist-E, Bureau of Indian Standards, Kolkata Branch Office Shri Nilay Baran Chakraborty, the then Scientist –C, Bureau of Indian Standards, Kolkata Branch Office	Both accused posted at the Kolkata Branch Office, BIS during the relevant time had demanded and accepted illegal gratification from the	In this connection, it may be noted that the same involves a Central Government employee. This case was registered based on the judgment dated 12.03.2020 of Hon'ble High Court at Calcutta in ***Ramesh Chandra Singh* supra** which held that the Central Government/CBI's power to investigate and prosecute its

Sl No.	Case No. & Date of Registration	Name of the accused	Brief allegation	Grounds for Registration
			complainant for passing samples of the packaged water produced by the firm	own officials cannot be in any way impeded or interfered by the State even if the offenses were committed within the territory of the State.
8	RC010202 0A0021 19.10.2020	Shri Raju Prasad, (Mob. No. 9431162279), S/o Late Mahendra Prasad, Regional Commissioner-I, CMPF, HQ, Dhanbad, R/o Navradha, Subhash Nagar, SaraiDhela, Dhanbad – 828127 Shri Bishwajeet Mukherjee, (Mob. No. 9832216129), S/o Late N.C. Mukherjee, Sr. SSA, CMPF, HQ, Dhanbad, R/o Vill. Fatehpur, P.O. Sitarampur, Distt. Burdwan – 713359	Fraudulent withdrawals in CMPF accounts maintained with CMPF after making fraudulent PF Ledger accounts of the subscribers	In this connection, it may be noted that the same involves a Central Government employee. This case was registered based on the judgment dated 12.03.2020 of Hon'ble High Court at Calcutta in ***Ramesh Chandra Singh*** **supra** which held that the Central Government/CBI's power to investigate and prosecute its own officials cannot be in any way impeded or interfered by the State even if the offenses were committed within the territory of the State.
9	RC010202 0A0022 27.11.2020	Anup Majee @ Lala, pvt.person	The accused person in connivance with unknown public Servants of ECL, CISF, Railways and Pvt Persons facilitated the illegal excavation and theft of coal from the leasehold area of ECL including Railway sidings.	As per Section 6 of DSPE Act, 1946 "Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in 2 [a State, not being a Union territory or railway area], without the consent of the Government of that State." Hence, withdrawal of the **Consent does not bar CBI investigation in offences committed in Railway areas.** In this connection, it may be noted that the same involves a Central Government employee. This case was registered based on the judgment dated 12.03.2020 of Hon'ble High Court at Calcutta in ***Ramesh Chandra Singh*** **supra** which

Sl No.	Case No. & Date of Registration	Name of the accused	Brief allegation	Grounds for Registration
				held that the Central Government/CBI's power to investigate and prosecute its own officials cannot be in any way impeded or interfered by the State even if the offenses were committed within the territory of the State. Further, Hon'ble High Court at Calcutta in the Judgment dt.28.07.2021 in C.R.R. 810 of 2021 - ***Vinay Mishra* supra,** held that the present FIR was correctly registered by the CBI.
10	RC0102020A0023 07.12.2020	Shri Bikash Kanti Mishra, the then Supdt. of Post	Trap case (Postal)	In this connection, it may be noted that the same involves a Central Government employee. This case was registered based on the judgment dated 12.03.2020 of Hon'ble High Court at Calcutta in ***Ramesh Chandra Singh* supra** which held that the Central Government/CBI's power to investigate and prosecute its own officials cannot be in any way impeded or interfered by the State even if the offenses were committed within the territory of the State.
11	RC 0732020E0001 of CBI, EOB, Kolkata 02.06.2020	1.Nasir SK, s/o Gias SK of Dakshin Zafarpur, PS – Falta, Dist - South 24-Paraganas (Pvt Person) 2. Anarul SK, s/o Samad SK, of Dakshin Zafarpur, PS – Falta, Dist - South 24-Paraganas. (Pvt Person)	The accused had started collecting money on daily basis from the complainant and others, with a proposal to make the invested money double in a short term. But, the	The Case RC-01/E/2020-Kolkta was registered in compliance of the order of the Hon'ble Supreme Court of India, vide its Order dated-09.05.2014 by taking over **FIR No. 1116/13, dated-31.12.2013, registered U/s 120B/34** of IPC in Maheshtala PS , West Bengal No question of breach of any fundamental principle of federalism arises in the present case in view of the judgment in

Sl No.	Case No. & Date of Registration	Name of the accused	Brief allegation	Grounds for Registration
			accused persons refused to return the said amount with an intention to cheat the aforesaid amount of money. Thus, the accused persons cheated the complainant as well as other investors and misappropriated the amount deposited by them.	***State of W.B. v. Committee for Protection of Democratic Rights*, (2010) 3 SCC 571**
12	RC0102021A0003 15.06.2021	1) Mrs. Mahua Pathak, Assistant Signal, Sealdah, (2) Shri Amritava Chowdhury, Pvt Person (3) Shri Mihir Kumar Chowdhury, Pvt Person (4) Smt. Archana Chowdhury, Pvt Person (5) Other unknown public servants and (6) Other unknown private persons.	Jnaneswari train accident fake claim.	In this connection, it may be noted that the same involves a Central Government employee. This case was registered based on the judgment dated 12.03.2020 of Hon'ble High Court at Calcutta in ***Ramesh Chandra Singh* supra** which held that the Central Government/CBI's power to investigate and prosecute its own officials cannot be in any way impeded or interfered by the State even if the offenses were committed within the territory of the State.

46. In this connection, it is also submitted that the consent of the Government of West Bengal U/s 6 of DSPE Act 1946 was sought for registration of 6 cases. However, the consent to CBI was denied by the State Govt in all six matters. The list is as under :

SR NO	LETTER NO AND DATE
1	1162/CA/699/2015/EOU-IX dated 25.02.2016 Reminder No.686/CA/699/2015/EOU-IX dated 12.03.2016
2	4708/SI EOU-IX/2015E0005 dated 26.07.2016
3	1863/CO16/2018/CBI/ACB/Kol dated 06.03.2019
4	DP/CAE/2019/No.5/98/pe.13/2014-KOLKATA dated 03.06.2019
5	GEN-III dated 16.05.2019
6	7066/RC 11(A)/2018-Kol dated 11.09.2019

It may be noted that in none of the six cases mentioned above, the CBI has not registered the FIR.

47. It is submitted that therefore, the Original Suit and the present application, amount to an abuse of the process of law and ought to be dismissed on the above stated grounds alone.

LEGAL SUBMISSIONS

48. It is stated that Order XIX Rule 2 of Supreme Court Rules, 2013 pleadings in an Original Suit ought not to contain "any argumentative matter", however, since the Plaintiff has pleaded argumentative pleadings and seeks to rely on the same, it is the duty of the Defendant to place the correct position of constitutional interpretation and statutory interpretation with regard to the subject matter of the suit on record. It is stated that the same is pleaded solely in response to the argumentative pleadings of the Plaintiff and no adverse inference ought to be drawn against the Defendant from the said pleadings. Further, the legal pleadings seek to defend the action of the CBI purely from a legal perspective and does not seek to impinge upon the right of the relevant authority to respond to the said Suit or pleadings therein.

49. That the Hon'ble Supreme Court in the case of ***S.P Chengalvaraya Naidu vs Jagannath*** **(1994 SCC (1) 1) (Para 7)** has also held:

> *"The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.*
>
> ***A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party**."*

50. That a bare perusal of the plaint and the orders of the Hon'ble High Court of Kolkata rendered in the subject matter of the present plaint, it is amply clear that the Plaintiff is attempting to re-litigate the matter or overreach the orders/judgments of the Hon'ble High Court. The same amounts to an abuse of the process of law and the Plaintiff's suit ought to be dismissed summarily. Reliance in this regard may be placed on the decision of the Hon'ble Supreme Court in the case of ***K.K. Modi vs K.N. Modi & Ors.*** **(1998) 3 SCC 573**, wherein it was held that:

> *"One of the examples cited as an abuse of the process of court is re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where*

> *the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted."*

51. Further, the Hon'ble Supreme Court of UK has also held in the case of ***McIlkenny -v- Chief Constable of the West Midlands*, [1980] QB 283, [1980] 2 All ER 227, [1980] 2 WLR 689** that:

> *"It is an abuse for a party to relitigate a question or issue which has already been decided against him even though the other party cannot satisfy the strict rules of res judicata or, here, the requirements of issue estoppel."*

52. It is submitted that with regard to the scope of the powers of the central force of the Central Bureau of Investigation is concerned, the same would be a function of the extent of the Executive power of the Union Government. It is pertinent to note that the State of West Bengal had granted a general consent as required under Section 5 of the DSPE Act *vide* notification dated 02.08.1989. Subsequently, *vide* notification dated 16.11.2018, the Plaintiff withdrew its consent. At the outset, it is submitted that it is necessary to examine federal framework in the distribution of power with regard to the investigative domain of the Central Government and the State Government in order to better appreciate the controversy. Undoubtedly, Entry I and Entry II of the State List in the Seventh Schedule of the Constitution of India empowers the State Government to investigate offences within its territory. It may be noted that Entry I of the State List itself carves out two exceptions to the generic entry of 'public order'. The said exceptions are – use of any naval, military or air force or any other armed force of the Union or of any other force which is subject to the control of the Union or of any contingent or unit thereof. The said entries have been reproduced hereinbelow:

"1. Public order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power).

2. Police (including railway and village police) subject to the provisions of entry 2A of List I."

53. That the aforementioned entries make it clear that the executive control of the Union Government over forces or contingents originates units within its control would not be included under the entry of 'public order', thereby admitting the control of the Union over such entities. That apart, the following entries of List I of the seventh schedule to the Constitution of India may be taken note of:

"1. Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation.

2. Naval, military and air forces; any other armed forces of the Union.

10. Foreign affairs; all matters which bring the Union into relation with any foreign country.

11. Diplomatic, consular and trade representation.

12. United Nations Organisation.

13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

15. War and peace.

16. Foreign jurisdiction.

17. Citizenship, naturalisation and aliens.

18. Extradition.

19. Admission into, and emigration and expulsion from, India; passports and visas.

21. Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.

22. Railways.

32. Property of the Union and the revenue therefrom, but as regards property situated in a State subject to legislation by the State, save in so far as Parliament by law otherwise provides.

41. Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers.

42. Inter-State trade and commerce.

52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest

80. ***Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State.***"**

54. That from a perusal of the above, the following aspect of the contours of the executive power of the Union emerge:

i) The aspects concerning international relations, international trade or anything concerning the relationship or transaction involving a foreign sovereign power, is reserved exclusively with the Central Government.

ii) The property of the Union and the regulation of mines such as coal is under the sole supervision and executive control of the Central Government.

iii) Matters concerning Railway and Railway areas are exclusively vested with the Central Government.

iv) The power to extend the powers in jurisdiction of Police Force belonging to one State to another State with the consent of such State is vested with the Union. However, such consent is not required in case it originates in a railway area.

55. That at this juncture, it is necessary to take note to Article 73 and Article 162 which respectively provides that the executive power of the Central Government and the State Government shall extend to matters relating to the subject which form a part of the List in the Seventh Schedule and in respect of which the legislature and the Central Government (Parliament) and of such State has the power to make laws. Article 73 and 162 of the Constitution of India have been reproduced hereinbelow:-

> *"73.* ***Extent of executive power of the Union***
>
> *(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend*
> *(a) to the matters with respect to which Parliament has power to make laws; and*

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the government of India by virtue of any treaty on agreement: Provided that the executive power referred to in sub clause (a) shall not, save as expressly provided in this constitution or in any law made by Parliament, extend in any State to matters with respect in which the Legislature of the State has also power to make laws

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution Council of Ministers."

*"162. **Extent of executive power of State Subject to the provisions of this Constitution**, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof Council of Ministers."*

56. It is submitted that the executive power of the State in matters in which both the legislature of the State and the Parliament has the power to make laws is subject to and limited by the executive power of the Union. It is necessary to take note of Article 257 which provides a supremacy of the executive power of the Central Government. Article 257 is quoted as under:

*"257. **Control of the Union over States in certain cases***

(1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose

(2) The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance: Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works

(3) The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State

(4) Where in carrying out any direction given to a State under clause (2) as to the construction or maintenance of any means of communication or under clause (3) as to the measures to be taken for the protection of any railway, costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the State."

57. It is submitted that it is important to note that irrespective of the aforementioned, the offences under the List of FIRs mentioned by the Plaintiff have admittedly taken place either within the 'Railway Areas', either relate to cross border international illegal trade, have multi-state ramifications or relate to employee under the direct administrative control of the Union Government. It is submitted that the said subject matter, by a combined reading of the entries of Schedule VII, fall within the domain of the CBI to investigate. It is submitted that in respect of conducting investigation into offences that have been committed in 'Railway Areas', or

offences relating to cross border international illegal trade, or offences having multi-state ramifications or offences relating to employees under the direct administrative control of the Union Government, it is inconsequential whether the concerned State Government has accorded its consent or not, as the Constitution and the DSPE Act unequivocally grants the power to investigate in such case to the CBI.

58. It is submitted that with regard to the scope of powers of the central force of the CBI is concerned, the same would be controlled by the extent of the Executive power of the Union Government. It is submitted that the Legislative Entries in List II of the seventh Schedule to the Constitution of India, as relied upon by the Plaintiff, cannot be interpreted in a manner wherein the investigative power of the Union Government, especially in spheres wherein substantial interest of the Union Government is involved, can be trammeled. It is submitted that domains of investigation, which specifically fall outside the scope of the executive powers of the States, cannot be "investigated" by the State by resorting to the Entries 1 and 2 of the State List. It is submitted that executive power of the State and the Union, both being a function of the legislative fields demarcated in the seventh Schedule of the Constitution, it is imperative that matters concerning the legislative entries in List 1, remain susceptible to investigations by Central agencies. Furthermore, it is submitted that in the context of criminal law, a constitution bench of the Hon'ble Supreme Court in ***Union of India v. V. Sriharan*, (2016) 7 SCC 1**, *inter-alia* held as under :

> "**29.** *Article 256 of the Constitution is yet another superscriptus (Latin) Executive Power of the Union obligating the Executive Power of the State to be subordinate to such power. Under the head "administrative relations" falling under Chapter II of Part XI of the Constitution, Articles 256, 257, 258 and 258-A are placed. Article 257(1) prescribes the Executive Power of the State to ensure that it does not impede or prejudice*

the exercise of the Executive Power of the Union apart from the authority to give such directions to the State as may appear to the Government of India to be necessary for that purpose. Under Article 258, the Executive Head of the Union, namely, the President is empowered to confer the Executive Power of the Union on the States in certain cases. A converse provision is contained in Article 258-A of the Constitution by which, the Executive Head of the State, namely, the Governor can entrust the Executive Power of the State with the Centre. Here again, we find that all these Articles are closely referable to the saving clause provided under the proviso to Article 73(1)(a) of the Constitution.

30. *The saving clause contained in Article 277 of the Constitution is yet another provision, whereunder, the authority of the Union in relation to levy of taxes can be allowed to be continued to be levied by the States and the local bodies, having regard to such levies being in vogue prior to the commencement of the Constitution. However, the Union is empowered to assert its authority by making a specific law to that effect by Parliament under the very same Article.*

32. *Article 285 of the Constitution is yet another provision where the power of the Union to get its properties lying in a State to be exempted from payment of any tax. Similarly, under Article 286 restrictions on the State as to imposition of tax on the sale or purchase of goods outside the State is prescribed, which can be ascribed by a law of Parliament.*

33. *Article 289 prescribes the extent of the executive and legislative power of the Union and Parliament in relation to exemption of property and income of a State from Union taxation.*

34. *The Executive Power of the Union and of each State as regards carrying on of any trade or business as to the acquisition, holding and disposal of property and the making of contracts for any purpose is prescribed under Article 298.*

35. *The above Articles 277, 282, 285, 286 and 289 fall under Part XII Chapter I and Article 298 under Chapter III.*

39. Thus, a close reading of the various constitutional provisions on the Executive Power of the Centre and the State disclose the constitutional scheme of the Framers of the Constitution to prescribe different types of such Executive Powers to be exercised befitting different situations. However, the cardinal basic principle which

weighed with the Framers of the Constitution in a democratic federal set-up is clear to the pointer that it should be based on "a series of agreements as well as series of compromises". In fact, the temporary Chairman of the Constituent Assembly, the late Dr Sachidananda Sinha, the oldest Parliamentarian in India, by virtue of his long experience, advised;

"that reasonable agreements and judicious compromises are nowhere more called for than in framing a Constitution for a country like India". (CAD Vol. 1, p. 4)

His ultimate request was that: (CAD Vol. 1, p. 5)

"... the Constitution that you are going to plan, may similarly be reared for 'immortality', if the rule of man may justly aspire to such a title, and it may be a structure of adamantine strength, which will outlast and overcome all present and future destructive forces."

With those lofty ideas, the Constitution came to be framed.

40. We are, therefore, able to discern from a reading of the various provisions of the Constitution referred to above, to be read in conjunction with Articles 72, 73, 161 and 162, which disclose the dichotomy of powers providing for segregation, combination, specific exclusion (temporary or permanent), interrelation, voluntary surrender, one-time or transitional or temporary measures, validating, superscriptus, etc. We are also able to clearly note that while the Executive Power of the State is by and large susceptible to being controlled by the Executive Power of the Union under very many circumstances specifically warranting for such control, the reverse is not the case. It is quite apparent that while the federal fabric of the set-up is kept intact, when it comes to the question of national interest or any other emergent or unforeseen situations warranting control in the nature of a superterrestrial order (celestial) the Executive Power of the Union can be exercised like a bull in the China shop.

41. *At the risk of repetition we can even quote some of such provisions in the Constitution which by themselves expressly provide for such supreme control, as well as, some other provisions which enable Parliament to prescribe such provisions by way of an enactment as and when it warrants. For instance, under Article 247 of the Constitution, by virtue of Schedule VII*

List III Entry 11-A, Parliament is empowered to provide for establishment of certain additional courts at times of need. In fact, it can be validly stated that the establishment of Fast Track Courts in the various States and appointment of Ad Hoc Judges at the level of entry level District Judges though not in the cadre strength, came to be made taking into account the enormous number of undertrial prisoners facing sessions cases of grievous offences in different States. This is one such provision which expressly provided for remedying the situation in the Constitution itself specifically covered by the proviso to Article 73(1)(a) and the proviso to Article 162 of the Constitution. Similar such provisions in the Constitution containing express powers can be noted in Articles 256, 257, 258, 285 and 286 of the Constitution. We can quote any number of such articles specifically and expressly providing for higher Executive Power of the Union governed by Article 73(1)(a) of the Constitution.

***42.** Quite apart, we can also cite some of the Articles under which Parliament is enabled to promulgate laws which can specifically provide for specific Executive Power vesting with the Union to be exercisable in supersession of the Executive Power of the State. Such provisions are contained in Articles 246(2), 249, 250, 277, 286 and 369 of the Constitution.*

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***131.** At the risk of repetition, we can refer to Article 73(1)(a) of the Constitution with its proviso to understand the constitutional prescription vis-à-vis its application for the purpose of ascertaining the appropriate Government under Section 432(7) of the Code. When we read the proviso to Article 73(1)(a) of the Constitution closely, we note that the emphasis is on the "Executive Power" which should have been expressly provided in the Constitution or in any law made by Parliament in order to apply the saving clause under the proviso. Once the said prescription is clearly understood, what is to be examined in a situation where any question arises as to who is the "appropriate Government" in any particular case, then if either under the law in which the prosecution came to be launched is exclusively under a Central enactment, then the Centre would be the "appropriate Government" even if the situs is in any particular State. Therefore, if the order passed by a criminal court covered by sub-section (6) of Section 432 was under any law relating to a matter where the Executive Power of the Union extends by virtue of enactment of such Executive Power under a*

law made by Parliament or expressly provided in the Constitution, then, the Central Government would be the appropriate Government. Therefore, what is to be noted is, whether the sentence passed under a law relating to a matter to which the Executive Power of the Union extends, as has been stipulated in the proviso to Article 73(1)(a) of the Constitution.

133. *For the purpose of ascertaining which Government would be the appropriate Government as defined under Section 432(7), what is to be seen is the sentence imposed by the criminal court under the Criminal Procedure Code or any other law which restricts the liberty of any person or imposes any liability upon him or his property. If such sentence imposed is under any of the sections of the Penal Code, 1860, for which the Executive Power of the Central Government is specifically provided for under a parliamentary enactment or prescribed in the Constitution itself then the "appropriate Government" would be the Central Government. To understand this position more explicitly, we can make reference to Article 72(1)(a) of the Constitution which while specifying the power of the Executive Head of the country, namely, the President it is specifically provided that the power to grant pardons, etc. or grant of remissions, etc. or commutation of sentence of any person convicted of any offence in all cases where the punishment or sentence is by a court martial, then it is clear to the effect that under the Constitution itself the Executive Power is specifically conferred on the Centre. While referring to various constitutional provisions, we have also noted such express Executive Power conferred on the Centre in respect of matters with reference to which the State is also empowered to make laws. If under the provisions of the Code the sentence is imposed, within the territorial jurisdiction of the State concerned, then the "appropriate Government" would be the State Government.* ***Therefore, to ascertain who will be the appropriate Government whether the Centre or the State, the first test should be under what provision of the Criminal Procedure Code the criminal court passed the order of sentence. If the order of sentence is passed under any other law which restricts the liberty of a person, then which is that law under which the sentence was passed is to be ascertained. If the order of sentence imposed any liability upon any person or his property, then again it is to be verified under which provision of the Criminal Procedure Code or any other law under which it was***

passed will have to be ascertained. *In the ascertainment of the above questions, if it transpires that the implication to the proviso to Article 73(1)(a) of the Constitution gets attracted, namely, specific conferment of Executive Power with the Centre, then the Central Government will get power to act and consequently, the case will be covered by Section 432(7)(a) of the Code and as a sequel to it, the Central Government will be the "appropriate Government" to pass orders under Sections 432 and 433 of the Criminal Procedure Code.*

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Questions 52.3, 52.4 and 52.5:

52.3 Whether Section 432(7) of the Code clearly gives primacy to the Executive Power of the Union and excludes the Executive Power of the State where the power of the Union is coextensive?

52.4 Whether the Union or the State has primacy over the subject-matter enlisted in List III of the Seventh Schedule to the Constitution of India for exercise of power of remission?

52.5 Whether there can be two appropriate Governments in a given case under Section 432(7) of the Code?

Answer

180. *The status of appropriate Government whether the Union Government or the State Government will depend upon the order of sentence passed by the criminal court as has been stipulated in Section 432(6) and in the event of specific Executive Power conferred on the Centre under a law made by Parliament or under the Constitution itself then in the event of the conviction and sentence covered by the said law of Parliament or the provisions of the Constitution even if the Legislature of the State is also empowered to make a law on the same subject and coextensive, the appropriate Government will be the Union Government having regard to the prescription contained in the proviso to Article 73(1)(a) of the Constitution. The principle stated in the decision in G.V. Ramanaiah [G.V. Ramanaiah v. Supt. of Central Jail, (1974) 3 SCC 531 : 1974 SCC (Cri) 6 : AIR 1974 SC 31] should be applied. In other words, cases which fall within the four corners of Section 432(7)(a) by virtue of specific Executive Power conferred on the Centre, the same will clothe the Union Government the primacy with the status of appropriate Government. Barring cases falling under Section 432(7)(a), in all other cases where the offender is sentenced or*

the sentence order is passed within the territorial jurisdiction of the State concerned, the State Government would be the appropriate Government."

59. It is submitted that further, a constitution Bench of this Hon'ble Court, while dealing with the argument of an expansive interpretation of the words "public order" as occurring in List II of Schedule VII, held in ***Kartar Singh v. State of Punjab,*** **(1994) 3 SCC 569**, as under:

"66. Having regard to the limitation placed by Article 245(1) on the legislative power of the legislature of the State in the matter of enactment of laws having application within the territorial limits of the State only, the ambit of the field of legislation with respect to 'public order' under Entry 1 in the State List has to be confined to disorders of lesser gravity having an impact within the boundaries of the State. Activities of a more serious nature which threaten the security and integrity of the country as a whole would not be within the legislative field assigned to the States under Entry 1 of the State List but would fall within the ambit of Entry 1 of the Union List relating to defence of India and in any event under the residuary power conferred on Parliament under Article 248 read with Entry 97 of the Union List.

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68. The terrorism, the Act (TADA) contemplates, cannot be classified as mere disturbance of 'public order' disturbing the 'even tempo of the life of community of any specified locality' — in the words of Hidayatullah, C.J. in Arun Ghosh v. State of W.B. [(1970) 1 SCC 98] but it is much more, rather a grave emergent situation created either by external forces particularly at the frontiers of this country or by anti-nationals throwing a challenge to the very existence and sovereignty of the country in its democratic polity.

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73. In our view, the impugned legislation does not fall under Entry 1 of List II, namely, 'public order'. No other entry of List II has been invoked. The impugned Act, therefore, falls within the legislative competence of Parliament in view of Article 248 read with Entry 97 of List I and it is not necessary to consider whether it falls under any of the entries in List I or List III. We are,

however, of the opinion that the impugned Act could fall within the ambit of Entry 1 of List I, namely, 'Defence of India'."

60. It is submitted that further, the Hon'ble Supreme Court in ***People's Union for Civil Liberties v. Union of India*, (2004) 9 SCC 580**, in the context of interpretation of Entries 1 and 2 of the State List, held as under :

*"**2.** The petitioners contended before us that since the provisions of POTA, in pith and substance, fall under Entry 1 (Public order) of List II, Parliament lacks legislative competence. To authenticate this contention, the decision in Rehman Shagoo v. State of J&K [AIR 1960 SC 1 : (1960) 1 SCR 680 : 1960 Cri LJ 126] is relied upon. According to them, the menace of terrorism is covered by the entry "Public order" and to explain the meaning thereof, our attention is invited to decisions in Romesh Thappar v. State of Madras [AIR 1950 SC 124 : 1950 SCR 594 : 1950 Cri LJ 1514] , Ram Manohar Lohia (Dr) v. State of Bihar [AIR 1966 SC 740 : (1966) 1 SCR 709 : 1966 Cri LJ 608] and Madhu Limaye v. SDM, Monghyr [(1970) 3 SCC 746] . The petitioners thus submitted that terrorist activity is confined only to State(s) and therefore, State(s) only have the competence to enact a legislation.*

***3.** The learned Attorney General refuting this contention submitted that acts of terrorism, which are aimed at weakening the sovereignty and integrity of the country cannot be equated with mere breaches of law and order and disturbances of public order or public safety. He argued that the concept of "sovereignty and integrity of India" is distinct and separate from the concepts of "public order" or "security of State" which fall under List II enabling States to enact legislation relating to public order or safety affecting or relating to a particular State. Therefore, the legislative competence of a State to enact laws for its security cannot denude Parliament of its competence under List I to enact laws to safeguard national security and sovereignty of India by preventing and punishing acts of terrorism. Learned Attorney General distinguished the decision in Rehman Shagoo [AIR 1960 SC 1 : (1960) 1 SCR 680 : 1960 Cri LJ 126] and submitted that the legislation dealt with therein is fundamentally and qualitatively different from POTA. He also argued before us that Rehman Shagoo [AIR 1960 SC 1 : (1960) 1 SCR 680 : 1960 Cri LJ 126] cannot mitigate the binding ratio and unanimous conclusion reached by this Court on the point of legislative competence in Kartar Singh v. State of Punjab [(1994)*

3 SCC 569 : 1994 SCC (Cri) 899 : (1994) 2 SCR 375] that Parliament can enact such law.

10. *The terrorist threat that we are facing is now on an unprecedented global scale. Terrorism has become a global threat with global effects. It has become a challenge to the whole community of civilised nations. Terrorist activities in one country may take on a transnational character, carrying out attacks across one border, receiving funding from private parties or a Government across another and procuring arms from multiple sources. Terrorism in a single country can readily become a threat to regional peace and security owing to its spillover effects. It is, therefore, difficult in the present context to draw sharp distinctions between domestic and international terrorism. Many happenings in the recent past caused the international community to focus on the issue of terrorism with renewed intensity. The Security Council unanimously passed Resolutions Nos. 1368 (2001) and 1373 (2001); the General Assembly adopted Resolution No. 56/1 by consensus, and convened a special session. All these resolutions and declarations inter alia call upon member States to take necessary steps to "prevent and suppress terrorist acts" and also to "prevent and suppress the financing of terrorist acts". India is a party to all these resolves. Anti-terrorism activities on the global level are mainly carried out through bilateral and multilateral cooperation among nations. It has thus become our international obligation also to pass necessary laws to fight terrorism.*

12. *Therefore, the anti-terrorism laws should be capable of dissuading individuals or groups from resorting to terrorism, denying the opportunities for the commission of acts of terrorism by creating inhospitable environments for terrorism and also leading the struggle against terrorism. Anti-terrorism law is not only a penal statute but also focuses on pre-emptive rather than defensive State action. At the same time, in the light of global terrorist threats, collective global action is necessary. Lord Woolf, C.J. in A, X and Y v. Secy. of the State for the Home Deptt. [2002 EWCA Civ 1502] has pointed out that:*

"... Where international terrorists are operating globally and committing acts designed to terrorize the population in one country, that can have implications which threaten the life of another. This is why a collective approach to terrorism is important."

13. *Parliament has passed POTA by taking all these aspects into account. Terrorism is not confined to the borders of the country.*

Cross-border terrorism is also threatening the country. To meet such a situation, a law can be enacted only by Parliament and not by a State Legislature. Piloting the Prevention of Terrorism Bill in the joint session of Parliament on 26-3-2002 the Hon'ble Home Minister said:

"... The Government of India has been convinced for the last four years that we have been here and I am sure even the earlier Governments held that terrorism and more particularly, State-sponsored cross-border terrorism is a kind of war. It is not just a law and order problem. This is the first factor, which has been responsible for Government thinking in terms of an extraordinary law like POTO.

... So, first of all, the question that I would like to pose to all of you and which we have posed to the nation is: 'Is it just in Jammu and Kashmir that we are facing an aggravated law and order situation or is it really when we say it is a proxy war, do we really believe that it is a proxy war?'... But when you have terrorist organisations being trained, financed by a State and it becomes State-sponsored terrorism and all of them are enabled to infiltrate into our country, it becomes a challenge of a qualitatively different nature...."

(emphasis supplied)

14. *From this it could be gathered that Parliament has explored the possibility of employing the existing laws to tackle terrorism and arrived at the conclusion that the existing laws are not capable. It is also clear to Parliament that terrorism is not a usual law and order problem.*

15. *The protection and promotion of human rights under the rule of law is essential in the prevention of terrorism. Here comes the role of law and court's responsibility. If human rights are violated in the process of combating terrorism, it will be self-defeating. Terrorism often thrives where human rights are violated, which adds to the need to strengthen action to combat violations of human rights. The lack of hope for justice provides breeding grounds for terrorism. Terrorism itself should also be understood as an assault on basic rights. In all cases, the fight against terrorism must be respectful to the human rights. Our Constitution laid down clear limitations on State actions within the context of the fight against terrorism. To maintain this delicate balance by protecting "core" human rights is the responsibility of court in a matter like this. Constitutional soundness of POTA needs to be judged by keeping these aspects in mind.*

17. *A Constitution Bench of this Court in Rehman Shagoo [AIR 1960 SC 1 : (1960) 1 SCR 680 : 1960 Cri LJ 126] examined the constitutionality of the Enemy Agents Ordinance (8 of S. 2005) promulgated by His Highness the Maharaja under Section 5 of the Jammu & Kashmir Constitution Act, S. 1996. For a proper understanding of the ratio in Rehman Shagoo [AIR 1960 SC 1 : (1960) 1 SCR 680 : 1960 Cri LJ 126] it is necessary to understand the background in which the impugned Ordinance was promulgated. (See Prem Nath Kaul v. State of J&K [AIR 1959 SC 749 : 1959 Supp (2) SCR 270] to understand the background that prevailed in the then Kashmir.) Because any interpretation divorced from the context and purpose will lead to bad conclusions. It is a well-established canon of interpretation that the meaning of a word should be understood and applied in accordance with the context of time, social and conditional needs. Rehman Shagoo [AIR 1960 SC 1 : (1960) 1 SCR 680 : 1960 Cri LJ 126] was concerned with the interpretation of Instrument of Accession and the power of the Maharaja to issue the impugned Ordinance therein. The same was promulgated to protect the State of Kashmir from external raiders and to punish them and those who assist them. The situation that prevailed during the latter half of the 1940s is fundamentally different from today. The circumstances of independence, partition, State reorganisation, and the peculiar situation prevailing in the then Kashmir etc. need to be taken into account. It is only in that context this Court said in Rehman Shagoo [AIR 1960 SC 1 : (1960) 1 SCR 680 : 1960 Cri LJ 126] that the impugned Ordinance (AIR p. 6, para 10) in pith and substance deals with public order and criminal law and procedure; the mere fact that there is an indirect impact on armed forces in Section 3 of the Ordinance will not make it in pith and substance a law covered by Item (1) under the head "Defence" in the Schedule.*

18*. Therefore, Rehman Shagoo [AIR 1960 SC 1 : (1960) 1 SCR 680 : 1960 Cri LJ 126] is distinguishable and cannot be used as an authority to challenge the competence of Parliament to pass POTA.* ***The problems that prevailed in India immediately after independence cannot be compared with the menace of terrorism that we are facing in the twenty-first century. As we have already discussed above, the present-day problem of terrorism is affecting the security and sovereignty of the nation. It is not State-specific but transnational. Only Parliament can make a legislation to meet its challenge. Moreover, the entry "Public order" in the State List only***

empowers the States to enact a legislation relating to public order or security insofar as it affects or relates to a particular State. Howsoever wide a meaning is assigned to the entry "Public order", the present-day problem of terrorism cannot be brought under the same by any stretch of imagination. Thus, Romesh Thappar [AIR 1950 SC 124 : 1950 SCR 594 : 1950 Cri LJ 1514] , Dr Ram Manohar Lohia [AIR 1966 SC 740 : (1966) 1 SCR 709 : 1966 Cri LJ 608] and Madhu Limaye [(1970) 3 SCC 746] (all cited earlier) cannot be resorted to to read "terrorism" into "public order". Since the entry "Public order" or any other entries in List II do not cover the situation dealt with in POTA, the legislative competence of Parliament cannot be challenged.

xxx

20. *While this is the view of the majority of Judges in Kartar Singh case [(1994) 3 SCC 569 : 1994 SCC (Cri) 899 : (1994) 2 SCR 375] K. Ramaswamy, J. held that Parliament does possess power under Article 248 and Entry 97 of List I of the Seventh Schedule and could also come within the ambit of Entry 1 of List III. Sahai, J. held that the legislation could be upheld under Entry 1 of List III. Thus, all the Judges are of the unanimous opinion that Parliament had legislative competence though for different reasons.*

21. *Considering all the abovesaid aspects, the challenge advanced by the petitioners of want of legislative competence of Parliament to enact POTA is not tenable."*

61. It is also important to take note that Entries 8, 22 and 80 (as listed out earlier) in List – I of Schedule VII to the Constitution of India, confers the exclusive power to investigate on such subject-matter, upon the CBI as the same falls outside the scope and purview of powers conferred upon the State Government/ its investigation agencies. It is submitted that Entry No. 80 of List I of Schedule VII to the Constitution mentions under the Union List the extension of the powers and jurisdiction of members of a police force belonging to any State, to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction of any area outside that State without the consent of the respective State Government in which

such area is situated; extensions of the powers and jurisdiction of members of a police force belonging to any State to Railway areas outside that State. As such, Railway areas have been carved out as an exception to the fetter of consent of the concerned State Government.

62. It is submitted that in the context of "railway areas", it is necessary to take note of the provisions of Delhi Special Police Establishment Act, 1946. Section 3 of the said Act provides the class of offences which are to be investigated by the Delhi Special Police Establishment. Section 4 of the DSPE Act covers superintendence and administration of the Special Police Establishment. Section 5 of the said Act provides that the Central Government may by order extend to any area including Railway areas outside Union Territory, the power to investigate offences by the Delhi Special Police Establishment Act. Section 5 is quoted as under:-

> *"**5.** Extension of powers and jurisdiction of Special Police Establishment to other areas.—(1) The Central Government may by order extend to any area (including railway areas), in a State, not being a Union Territory the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under Section 3.*
> *(2) When by an order under sub-section (1) the powers and jurisdiction of members of the said police establishment are extended to any such area, a member thereof may, subject to any orders which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of a police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.*
> *(3) Where any such order under sub-section (1) is made in relation to any area, then, without prejudice to the provisions of sub-section (2) any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer in charge of a police*

station in that area and when so exercising such powers, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station."

63. Further, Section 6 of the DSPE Act is very important which requires consent of the State Government for exercising powers and jurisdiction under the Act by Special Police Establishment to any area in a State not being Union Territory or Railways. Section 6 of the DSPE Act has been reproduced hereinbelow:

*"**6.** Consent of State Government to exercise of powers and jurisdiction.—Nothing contained in Section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union Territory or railway area, without the consent of the Government of that State."*

64. In the matter of ***M. Balakrishna Reddy v. CBI*, (2008) 4 SCC 409 : (2008) 2 SCC (Cri) 391,** it was held that in view of Section 5 and 6 of the DSPE Act, it can be held *"that for exercise of jurisdiction by the CBI in a State (other than Union Territory or Railway area), consent of the State Government is necessary"* and therefore offence in the 'Railway Areas' in the State of West Bengal, can be investigated by the CBI as per Section 5 of the DSPE Act, which confers the power to the CBI to conduct investigation even in the absence or withdrawal of a general consent. The aforementioned makes it clear that even if the consent is withdrawn within a State by the State Government, the power of the Delhi Special Police Establishment Act to investigate the offences relating to Railway areas continues to apply. Further, it is submitted that the object of including 'Railway Areas' within the jurisdiction of the CBI to investigate upon, was that the Railway Areas are spread across the country, overlapping into the territories of various States and thus, if the CBI was to undertake consent from every State prior

to conducting investigation in such cases, it would completely defeat the purpose sought to be achieved by the DSPE Act.

65. It is submitted that in the context of employees of the Central Government, employed in sector and services which carry out function exclusively vested by the Constitution to the Central Government is concerned, it is necessary to note that the extent of the executive power of the Central Government would necessarily include the executive power to investigate the criminal offences committed by such person especially during the discharge of their function as officers with the Central Government to deprive Central Government and by extension the officers of the Delhi Special Police Establishment the power to investigate such officer and such offences would be to completely misread the provisions of the Constitution and the Delhi Special Police Establishment Act. In this regard, it may also be noted that the Ministry of Home Affairs vide Resolution dated 1st April, 1963 established the Central Bureau of Investigation (which functions under the aegis of the Delhi Special Police Establishment Act). The said Resolution provided the function of the Central Bureau of Investigation which clearly mandated that *"(1) Cases in which public servants under the control of the Central Government are involved either themselves or along with State Government servants and/or other persons"* would be investigated by the Delhi Special Police Establishment. It is submitted that therefore, the present cases are undoubtedly liable to be investigated by the Central Bureau of Investigation.

66. It is submitted that the CBI does not operate under the jurisdiction of the Ministry of Personnel and it is the Central Vigilance Commission that has "superintendence" over the said organisation. It is submitted that further, the Central Bureau of Investigation is an independent agency which has its own procedures for appointments and other connected

administrative decision making. It is the foremost investigating police agency in India and undertakes investigation in *inter-alia*, major criminal and corruption cases. The CBI traces its origin to the Special Police Establishment (SPE) which was set up in 1941 by the Government of India. Subsequently, on the recommendations of the Santhanam Committee on Prevention of Corruption, the CBI was established on 1.4.1963, vide Resolution No. 4/31/61- T/MHA issued by the Government of India. Initially, the offences that were notified by the Central Government pertained to corruption by Central Government officials. In due course, with the setting up of a large number of public sector undertakings, the employees of these undertakings were also brought under the purview of the CBI. Similarly, with the nationalization of the banks in 1969, the Public Sector Banks and their employees also came within the ambit of the CBI.

67. In the context of investigation with cross border implication outside the country and investigations cutting across various states in the country, it may be noted that considering the fact that the powers of local police of a State Government are naturally circumscribed to be exercised within the territory of the State and considering the fact that the extent of the offences in the present cases extend beyond the State of West Bengal, it will not be possible for the local police to effectively investigate the entire offence. It is submitted that in the said backdrop, it becomes necessary, in the interest of a purposive and rational interpretation of Constitution and the legislation – DPSE, that the offence be investigated by an authority having pan India jurisdiction. It is submitted that therefore, the registration of the FIR by the CBI, cannot be doubted in the cases mentioned by the Plaintiff. It is submitted that the Central agency of the CBI was established as a Central agency to investigate exactly the said kind of offence so as to overcome the

limitation of local police to investigate only within the confines of the said State.

68. In this context, relevant extract from ***Kanwal Tanuj v. State of Bihar and Ors.*** **[2020 SCC OnLine SC 395],** is reproduced hereinbelow:

> *"Such a consent may not be necessary regarding the investigation by the special police force (DSPE) in respect of specified offences committed within Union Territory and other offences associated therewith.* ***That may be so, even if one of the accused involved in the given case may be residing or employed in some other State (outside the Union Territory) including in connection with the affairs of the State/local body/corporation, company or bank of the State or controlled by the State/institution receiving or having received financial aid from State Government, as the case may be. Taking any other view would require the special police force to comply with the formality of taking consent for investigation even in relation to specified offence committed within Union Territory, from the concerned State merely because of the fortuitous situation that part of the associated offence is committed in other State and the accused involved in the offence is residing in or employed in connection with the affairs of that State. Such interpretation would result in an absurd situation especially when the 1946 Act extends to the whole of India and the special police force has been constituted with a special purpose for investigation of specified offences committed within the Union Territory, in terms of notification issued under Section 3 of the 1946 Act****."*

69. Furthermore, it is most reverentially submitted that the CBI is entitled to interrogate/ investigate individuals that are Central Government employees. It is specifically stated that the CBI does not need a prior consent from the respective State Government before proceeding to investigate its own employee, irrespective of the fact whether the concerned employee is

within the territorial jurisdiction of the CBI to investigate upon or not. That the relevant extract from ***Kanwal Tanuj* supra,** is reproduced hereinbelow:

> *"Indisputably, the registered office of BRBCL is within the jurisdiction of Union Territory of Delhi (National Capital Territory of Delhi) and allegedly the offence has been committed at Delhi, for which reason the Delhi Court will have jurisdiction to take cognizance thereof. To put it differently, the offence in question has been committed outside the State of Bihar. The investigation of the stated offence may incidentally transcend to the territory of State of Bihar because of the acts of commission and omission of the appellant who is resident of that State and employed in connection with the affairs of the State of Bihar. That, however, cannot come in the way of special police force (DSPE) from investigating the offence committed at Delhi and has been so registered by it and is being investigated. Had it been an offence limited to manipulation of official record of the State and involvement of officials of the State of Bihar, it would have been a different matter. It is not the case of the appellant or the State of Bihar that even an offence accomplished at Delhi of defrauding of the Government of India undertaking (having registered office at Delhi) and siphoning of the funds thereof at Delhi can be investigated by the State of Bihar. If the State police has had no jurisdiction to investigate the offence in question, as registered, then, seeking consent of the State in respect of such offence does not arise. Any other approach would render the special provisions of the 1946 Act otiose."*

70. Further, in the aforesaid matter, even though the general consent accorded by the State of Bihar had a proviso which required the CBI to accord a prior consent from the State of Bihar before proceeding to investigate upon employees of the State Government of Bihar, this Hon'ble Court held that:

> *"**22.** Indeed, the said notification contains a proviso, which predicates that if any public servant employed in connection with the affairs of the Government of Bihar is concerned in offences being investigated by the special police force pursuant to the notification, prior consent of the State*

Government qua him shall be obtained. This proviso must operate limited to cases or offences which have been committed within the territory of the State of Bihar. If the specified offence is committed outside the State of Bihar, as in this case in Delhi, the State police will have no jurisdiction to investigate such offence and for which reason seeking consent of the State to investigate the same would not arise. In our opinion, the stated proviso will have no application to the offence in question and thus the Delhi special police force/DSPE (CBI) must be held to be competent to register the FIR at Delhi and also to investigate the same without the consent of the State.

24. *Suffice it to observe that the proviso contained in the stated notification dated 19.2.1996 cannot be the basis to disempower the special police force/DSPE (CBI) from registering the offence committed at Delhi to defraud the Government of India undertaking (BRBCL) and siphoning of its funds and having its registered office at Delhi. Allegedly, the stated offence has been committed at Delhi. If so, the Delhi Courts will have jurisdiction to take cognizance thereof. The State police (State of Bihar) cannot investigate the specified offences committed and accomplished at Delhi, being outside the territory of the State of Bihar.* ***It must follow that the consent of the State of Bihar to investigate such offence is not required in law and for which reason, the special police force would be competent to carry on the investigation thereof even if one of the accused allegedly involved in the commission of stated offence happens to be resident of the State of Bihar or employed in connection with the affairs of the Government of Bihar and allegedly committed associated offences in that capacity. In other words, consent of the State under Section 6 cannot come in the way or constrict the jurisdiction of the special police force constituted under Section 2 to investigate specified offences under Section 3 of the 1946 Act committed within the Union Territories. Indeed, when the Court of competent jurisdiction proceeds to take cognizance of offence and particularly against the appellant, it may consider the question of necessity of a prior sanction of the State of Bihar qua its official(s) as may be required by law. That question can be considered on its own merits in accordance with law."***

71. It may further be relevant to note the ratio given by this Hon'ble Court in ***Fertico Marketing and Investment Pvt. Ltd. and Ors. v. CBI and Anr.*** **[2020 SCC OnLine SC 938]** wherein, while dealing with the issue of CBI undertaking investigation and filing a charge-sheet without the prior consent of the State, this Hon'ble Court noted that Section 6 of the DSPE Act is directory in nature and not mandatory;

> *"**23.** Recently, a bench of this Court consisting one of us (Khanwilkar J.) had an occasion to consider the aforesaid provisions of DSPE Act, in Kanwal Tanuj v. State of Bihar. In the said case, the question arose, as to whether when an offence was committed in the Union Territory and one of the accused was residing/employed in some other State outside the said Union Territory, the Members of DSPE had power to investigate the same, unless there was a specific consent given by the concerned State under Section 6 of the DSPE Act. The contention on behalf of the appellant before the High Court was that since the appellant was employed in connection with the affairs of the Government of Bihar, an investigation was not permissible, unless there was a specific consent of State of Bihar under Section 6 of the DSPE Act. This Court rejected the said contention holding that if the offence is committed in Delhi, merely because the investigation of the said offence incidentally transcends to the Territory of State of Bihar, it cannot be held that the investigation against an officer employed in the territory of Bihar cannot be permitted, unless there was specific consent under Section 6 of the DSPE Act. <u>While considering the argument on behalf of the State, that such a consent was necessary for CBI to proceed with the investigation, this Court held that the respondent-State having granted general consent in terms of Section 6 of the DSPE Act vide notification dated 19.02.1996, it was not open to the State to argue to the contrary.</u>*
>
> ***26.** In the result, we find no reason to interfere with the finding of the High Court with regard to not obtaining prior consent of the State Government under Section 6 of the DSPE Act."*

72. Further reference may be drawn from paragraphs 14 and 15 of the alleged impugned order dated 12.02.2021 wherein the Hon'ble High Court was pleased to observe as follows:

> *"**14. From a plain reading of the FIR it cannot be suggested that the offence has been committed at one place as these are chain of events, which are interlinked with the railways and other officers, including those of Para-Military Force, namely, CISF, who are drawing salaries from the Central Government. Proper investigation cannot be carried out if the investigation in such cases is divided in parts, drawing lines on territories once the premier central agency is in the process of investigation.***
> ***15. No prejudice as such is going to be caused to one of the accused/the writ petitioner at this stage who is before the Court as none other has approached the Court. In case during the pendency of the present appeals, investigation being carried out by the CBI is hampered, the process of investigation at this stage will certainly be prejudiced, which will not be in the interest of justice as any delay in the process may be fatal**..."*

73. Therefore, it is made abundantly clear that CBI do not require a prior consent from the State Government before engaging in an investigation concerning its own officials/employees, irrespective of whether or not the concerned employees are residing/ working within the territorial jurisdiction, as provided under the DSPE Act. This Hon'ble Court extensively laid down the history of the constitution of the CBI in ***Advance Insurance Co. v. Gurudasmal*, [(1970) 1 SCC 633].** The relevant extract have been reproduced hereinbelow:

> *"**2.** Before the High Court many questions were mooted. Shortly stated the argument is that the Delhi Special Police Establishment is not constitutional and that it has no jurisdiction to investigate the cases in other States. This argument has many facets which will presently appear. Before*

we consider them it is necessary to say something about the original constitution of this Special Police Establishment.

3. *We are concerned today with the Delhi Special Police Establishment Act of 1946 (25 of 1946). This Act succeeded two Ordinances which had been earlier passed by the Governor-General and it had been amended from time to time by way of adaptation and modification. It was passed when the Government of India Act, 1935 was in force. Entry 3 of the Provincial Legislative list in the 7th Schedule to the Government of India Act, 1935, read "police including railway and village police". Entry 39 of the Federal Legislative List was as follows:*

> ***39.*** *Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit."*

It was substituted by the India (Provisional Constitution) Order, 1947, as follows:

> *39. Extension of the powers and jurisdiction of members of a police force belonging to any Province to any area in another province, but not so as to enable the police of one province to exercise powers and jurisdiction in another province without the consent of the Government of that Province; extension of powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.*
>
> *In this entry 'Province' includes a Chief Commissioner's province."*

The Explanation which was included in this last entry was to obviate the implication of the definition of a Province in Section 46(3) of the Act which read:

> *In this Act the expression 'Province' means unless the context otherwise requires, a Governor's Province, and 'Provincial' shall be construed accordingly.*

The implication of the Explanation was to apply to Entry 39 of the Chief Commissioner's Province in addition to Governor's Province. In this way the jurisdiction exercisable under Entry 39 was made co-extensive again with what was formerly British India, which, by Section 311(1) of the Act, meant both kinds of provinces. The prior history of the Act may be shortly noted. It has little bearing upon the questions in hand.

4. *On July 12, 1943, the Governor General enacted an Ordinance (22 of 1943), in exercise of his powers conferred by Section 72 of the Government of India Act which was continued in the Ninth Schedule to the Government of India Act, 1935. An emergency had been declared owing to World War II and the powers were exercisable by the Governor General. The Ordinance was called the Special Police Establishment (War Department) Ordinance, 1943. It extended to the whole of British India and came into force at once. By Section 2(4) the Special Police Establishment (War Department) was constituted to exercise throughout British India the power and jurisdiction exercisable in a province by the members of the police force of that province possessing all their powers, duties, privileges and liabilities. Under Section 4 the superintendence of the Special Police Establishment (War Department) was vested in the Central Government. It was, however, provided by Section 3 as follows:*

> *Offences to be investigated by Special Police Establishment.—The Central Government may by general or special order specify the offences or classes of offences committed in connection with Departments of the Central Government which are to be investigated by the Special Police Establishment (War Department), or may direct any particular offence committed in connection with a Department of the Central Government.*

5. *Ordinance 22 of 1946 was repealed by the Delhi Police Establishment Act, 1946 (25 of 1946), which re-enacted the provisions of the Ordinance. This Act was adapted and amended on more than one occasion. First came the Adaptation of Laws Order, 1950, enacted under clause 3 of Article 372 of the Constitution on January 26, 1950. It made two changes. The first was throughout the Act for the words "Chief Commissioner's Province of Delhi" the words "State of Delhi" were substituted and for the word "Provinces" the words "Part A and C States" were substituted. This was merely to give effect to the establishment of "States" in place of "Provinces" under the scheme of our Constitution.*

6. *Next came the changes introduced by Part B Slates (Laws) Act, 1951 (Act 3 of 1951). They were indicated in the Schedule to that Act. Those changes removed the words "in the States" in the long title and the preamble. The purpose of this was to remove reference to the States in the phrases "for the extension to other areas in the States". The more significant changes came in 1952 by the Delhi Special Police Establishment (Amendment) Act, 1952 (26 of 1952). In the long title (after the "Adaptation of Laws Order, 1950") the words were:*

> *An Act to make provision for the constitution of a special police force for the State of Delhi for the investigation of certain offences committed in connection with matters concerning Department of the Central Government etc.*

After the amendment the words read:

> *An Act to make provision for the constitution of a special police force in Delhi for the investigation of certain offences in Part C States.*

Similar changes were also made in the preamble and in Section 3 the reference to Departments of Government was also deleted. The change from "for the State of Delhi" to "in Delhi" as the subject of comment in the High Court. To that we shall refer later.

7. *In 1956 the Constitution (Seventh Amendment) Act, 1956, was enacted. Previously the Constitution specified the States as Parts A, B and C States and some territories were specified in Part D in the First Schedule. By the amendment the distinction between Parts A and B was abolished. All States (previously Part A and B States) were shown in the First Schedule under the heading "The States" and Part C States and Part D territories were all described as Union Territories. Thereupon an Adaptation of Laws Order, 1956, was passed and in the Delhi Special Police Establishment Act, 1946, all references to "Part C States" were replaced by the expression "Union Territory". Another significant change made by the Amending Act was to remove from Section 2 the words "for the State of Delhi", and all references to offences by the words "committed in connection with matters concerning Departments of the Central Government" were deleted. The resulting position in 1956 may thus be stated by quoting the pertinent sections:*

> *"2. (1) Notwithstanding anything in the Police Act, 1861, the Central Government may constitute a special police force to be called the Delhi Special Police Establishment ... for the investigation of offences notified under Section 3.*
>
> *(2) Subject to any orders which the Central Government may make in this behalf, members of the said police establishment shall have throughout in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers have in connection with the investigation of offences committed therein.*
>
> *(3) Any member of the said police establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise in any of the powers of the officer in charge of a police station in the area in which he is for the time being and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer in charge of a police station discharging the*

functions of such an officer within the limits of his station.

***3.** The Central Government may, by notification in the Official Gazette, specify the offences or class of offences which are to be investigated by the Delhi Special Police Establishment.*

***5.** **(1)** The Central Government may by order extend to any area (including Railway areas), the powers and jurisdiction of members of Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under Section 3.*

***6.** Nothing contained in Section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in the State (not being a Union Territory or railway area), without the consent of the Government of that State."*

74. It is submitted that the CBI stands apart from rest of the investigating agencies across the Country. The CBI has a set of Standard Operating Procedures (**SOPs**) in every aspect of investigation. These SOPs ensure the conduct of investigation in a just manner. Further, it is important to note that there is a multi-layered supervision over the investigation and overall functioning of the CBI so as to ensure optimum transparency and efficiency in the conduct of investigations.

75. Lastly, it is submitted that where a proceeding is instituted in a court to which provisions of the Code apply, it shall not proceed with the matter in which the matter in issue is also directly and substantially in issue in a previously instituted proceeding between the same parties. It is further required that the Court in which the previous proceeding is pending is competent to grant the relief claimed. The use of negative expression in Section 10 i.e. "no court shall proceed with the trial of any suit" makes the provision mandatory and the court in which the subsequent proceeding has

been filed is prohibited from proceeding with the trial. This Hon'ble Court has in ***Aspi Jal v. Khushroo Rustom Dadyburjor*, (2013) 4 SCC 333** held that the basic purpose and the underlying object of Section 10 of the Code is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject-matter and the same relief. It is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to protect the defendant from multiplicity of proceedings.

Para-wise Reply

76. It is submitted that no part of the present application has been admitted by the Defendant. The Defendant places the following para-wise reply to the said Application :

a. That the contents of Paragraph 1 are a matter of record and need no reply.

b. That the contents of Paragraph 2 are a matter of record and need no reply.

c. That the contents of Paragraph 3 are false, misleading and are hereby denied. It is denied that the Defendant (or the Central Bureau of Investigation/CBI) has been acting in a manner contrary to statute, being the DSPE Act, or the Constitution, specifically Article 245-246 read with the Seventh Schedule. It is denied that the CBI derives its powers to exercise its jurisdiction in any area in a state (not being an union territory) under the DSPE Act only. It is denied that such exercise of power is subject to the State granting consent to the CBI under Section 6, DSPE Act. It is stated that the principle of federalism with a

unitary bias does not imply a complete embargo on the powers of the CBI in all possible factual circumstances.

d. That the contents of Paragraph 4 are false, misleading and are hereby denied. The Plaintiff on November 16, 2018 has withdrawn its consent under Section 6, DSPE Act, 1946, however, it is denied that it was that consent only which permitted the CBI to investigate offences and persons within the territory of West Bengal. It is denied that pursuant to such withdrawal of consent, the CBI is always required to obtain the prior consent of the Plaintiff State before registering and investigating cases in the territory of West Bengal. It is denied that Defendant or the CBI has in any way usurped the powers of the State Police. It is denied that the actions of the Defendant or the CBI have, in any manner, impacted any case and investigation of offences that ought to be done by the State Police.

e. That the contents of Paragraph 5 are false, misleading and are hereby denied. It is denied that there is any possibility of the Defendant or the CBI violating the DSPE Act or subverting the basic structure of the Constitution by acting against express Constitutional provisions. It is denied that if this Hon'ble Court does not urgently restrain the Defendant or the CBI there will be grave consequences for the Plaintiff State's ability to exercise jurisdiction over law and order, and police.

f. That the contents of Paragraph 6 are false, misleading and are hereby denied.

g. That the contents of Paragraph 7 are false, misleading and are hereby denied. It is submitted that the Plaintiff has no prima facie case, the issue is res-subjudice and further the investigations conducted by the CBI at various advanced stages and therefore, the Plaintiff has no balance of convenience in its favour. Further, it is submitted that no

immediate prejudice is caused to the Plaintiff and certainly no irreparable injury is caused thereof. It is submitted that the ad interim relief sought for by the Plaintiff only assists and helps the accused persons in the FIRs registered by the CBI, which involve a larger conspiracy involving persons from higher echelons of the political and administrative wing of the Plaintiff State.

77. It is submitted that therefore, the present Application and the appended Original Suit, deserve to be dismissed. I further submit that the Union of India reserves the right to file a more detailed affidavit in reply to the present Application with the leave of this Hon'ble Court, if necessary, at a later stage as the present affidavit has been filed in the limited time available with the Defendant.

[redacted]
DEPONENT
(राहुल सिंह)
(RAHUL SINGH)
संयुक्त सचिव/Joint Secretary
कार्मिक तथा प्रशिक्षण विभाग
Deptt. of Personnel & Training
भारत सरकार/Govt. of India

VERIFICATON

Verified at New Delhi on this 20th day of October, 2021, that the contents of the Paragraph 1-10, 12, 13, 21-28, 30-34, 37, 39-43, 45 [without the column on grounds for registration], 46, 47, 76-77 of the above affidavit are true and correct to my knowledge and belief and derived from the official records. The contents of the Paragraph 11, 14-20, 29, 35-36, 38, 44, 45 [only the column on ground for registration], 48-75 of the above affidavit are true and based on the legal advice received by me and believed by me to be true. No part of the above affidavit is false and nothing material has been concealed there from.

[redacted]
DEPONENT
(राहुल सिंह)
(RAHUL SINGH)
संयुक्त सचिव/Joint Secretary
कार्मिक तथा प्रशिक्षण विभाग
Deptt. of Personnel & Training
भारत सरकार/Govt. of India