IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL REVISIONAL JURISDICTION

CRR 910 of 2019

RAMESH CHANDRA SINGH & ANOTHER
-Versus-
CENTRAL BUREAU OF INVESTIGATION.

For the petitioners	:	Mr. Sandipan Ganguly, Mr. Anand Keshri, Mr. Satadru Lahiri
For the CBI	:	Mr. Anirban Mitra
Hearing Concluded on	:	06.03.2020
Judgment on	:	12.03.2020

Rajasekhar Mantha, J.:

1. A complaint was filed by the Central Government against the Petitioners with the CBI alleging omissions and commissions against the petitioners. Pursuant thereto the Superintendent of Police, CBI, ACB, Kolkata registered an FIR on the 19th day of November, 2019, vide no. R. C. Case No. 0102018A0012, under Section 109 of the Indian Penal Code, 1860 (hereinafter referred as "IPC") read with Section 7, 13(2), 13 (1)(b) of the Prevention of Corruption Act, 1988 (hereinafter referred as "PC Act"), alleging that :

i. ITRs filed for the assessment year 2012-2018

   a. by Petitioner No. 1, viz., Ramesh Chandra Singh declared his income to the tune of Rs. 59, 21, 306/- &

b. by Petitioner No. 2, Sangita Singh, W/O Petitioner No. 1, declared her income to 27, 43, 187/-

ii. Petitioner No. 1 has amassed huge assets in his name and in the name of family that is disproportionate to his own sources of income

iii. On 1st day of April, 2012, Petitioner No. 1 was possessor of asset worth 19, 24, 662/- and on 28th day of June, 2018 he is alleged to be possessor of asset worth 1, 36, 63, 175/-, which is inclusive of an apartment, his bank deposits and post-office investments

iv. Petitioner No. 1 is alleged to have expended an educational-expenditure worth Rs. 25, 73, 769/- towards his children

v. A summation of his expenditures and assets hence tantamount to a sum worth Rs. 1,43,12,282/- which is disproportionate to the total income.

2. The Government of West Bengal, Home and Hill Department at Nabanna has issued a Notification No. 450/HS/PA/18 dated 16.11.2018 whereby the State has withdrawn the standing consent accorded U/s. 6 of the Delhi Special Police Establishment Act, 1946 vide G.O. No. 6145-PL/PE/2A/10/88 dated 02.08.1989 to all the members of the Delhi Special Police Establishment (CBI in this case) to exercise the powers & jurisdiction under the DSPE Act in the State of West Bengal.

3. The Petitioners have moved this application U/s. 482 of the Cr.P.C. challenging the said FIR.

i. Permission under Section 6 of the Delhi Special Police Establishment Act, 1946 ("DSPE" Act, 1946) having been withdrawn by the State of West Bengal on 06.11.2018 the CBI cannot investigate the offence.

ii. The CBI investigation is, therefore, illegal as it has no jurisdiction to investigate on a subject matter that is within the exclusive jurisdiction of the State Government.

iii. Entry 2 of List II of the VIIth Schedule of the Constitution of India confers exclusive Jurisdiction on the State with regard to policing. Such exclusive jurisdiction of a state cannot be encroached upon by the centre on the CBI.

4. The State has chosen not to participate in the instant proceedings. It is therefore presumed that the State does not have anything to say in the matter or oppose the investigation by the CBI against the petitioner.

5. Mr. Sandipan Ganguly, Learned Counsel for the Petitioner has placed Section 6 of the DSPE Act1946 to assail the FIR lodged by the CBI on the basis of a legal maxim *"sublato fundamento cadit opus"* (foundation being removed, the structure falls.). It is contended that since the State has withdrawn the blanket permission granted to the Central Government to initiate the proceedings the FIR is itself illegal and all subsequent & proceedings would be null and void.

6. Counsel for the petitioner argues that Entry 2 of List II of the VIIth Schedule of the Constitution of India confers exclusive Jurisdiction on the State in

matter of policing. It is only with the express consent of the State that the CBI can investigate and prosecute any person within the territory of the State. He further submits that the object of permission under Section 6 of the DSPE Act read with Article 246 of the Constitution is to preserve the federal structure of the Constitution.

7. In the Affidavit-In-Opposition and in a supplementary affidavit the CBI would urge that the official communication of the withdrawal of consent under S. 6 of the DSPE Act was received at the office of the CBI by fax on 19.11.2018 at 16:56 hours & the FIR against the petitioner was registered at 16:30 hours on the same date. The CBI, in support of this argument, cited **McDowell & C Ltd. Etc vs. State of Bihar, 2000 (3) BLJR 1847** and contends that the notification which is required to be published in the Official Gazette would come into force only when it served.

8. Mr. Anirban Mitra, Counsel for the CBI has also argued by reference to a decision of a coordinate bench of this Court dated**12th November 2013** in the case of **Binod Kumar Kabra Vs State of West Bengal and Ors** being **CRR No. 1882 of 2013**, that an FIR of the CBI is registered not in terms of the Criminal Procedure Code before a police Station but as per the CBI manual. Hence the filing of a complaint with the office of CBI and registration of the FIR at 16:30 hours on 19.11.2018 would fulfil the requirements of Section 154 of the Cr.P.C. The Co-ordinate bench has held as follows:-

"There is no controversy that consent has been granted by the State Government under Section 6 of the Act of 1946 for investigate the offences in this case. Notification of the office of CBI where the Superintendent receives the written information as a police station under section 2 (s) of the Code is not necessary as such status and empowerment is conferred on him by way of the aforesaid legal fiction. Creation of a police station by executive order of the State Government under the Code is therefore not a sine qua non for vesting powers of an officer in charge of a police station on the members of the force. Act of 1946 is a special law relating to investigation of notified offences by a special police force and would undoubtedly override the general provisions of the Code. The deeming provisions has been read in that perspective and given its fullest expression. It cannot be subject to any restriction other than what appears from the provision itself.

I am unable to accept the submission of the petitioner that such deeming provision cannot be effectuated within notifying the office of the Special Police establishment as a
"Police Station" under section 2 (s) of the Code. Acceptance of such interpretation would render the deeming provision nugatory and make its effect conditional on the creation of a new police station by the State Government - a proposition alien to the Scheme of the Special Statute.

For the aforesaid reason, I am in agreement with the reasons recorded in the impugned order that in view of the deeming provision contained in Section 5 (3) of the Act of 1946, the reception of written complaint and its registration as a first information report by the Superintendent of Police at Calcutta Zonal Office of Central Bureau of Investigation cannot be said to be an action contrary to the statutory mandate contained in Section 154 of the Code of Criminal Procedure or any other provision of the Code. Officers of Central Bureau of Investigation in the exercise of their investigational powers are regulated by the provisions of CBI Manual. Paragraphs 10.l and 10.2 of the Manual provides the procedure of registration of FIR by CBI. Paragraph 10.1 and 10.2 reads as follows:

> "*10.1 On receipt of a complaint or after verification of an information or on completion of a Preliminary Enquiry taken up by CBI if it is revealed that prima facie a cognizable offence has been committed and the matter is fit for investigation to be undertaken by Central Bureau of Investigation, a First Information Report should be recorded under Section 154 Criminal Procedure Code and investigation taken up While considering registration of an FIR, it should be ensured that at least the main offence/s have been notified under Section 3 of the Delhi Special Police Establishment Act. The registration of First Information Report may also be done on the direction of Constitutional Courts, in which case it is not necessary for the offence to have been notified for investigation by DSPE. The FIRs under investigation with local police or any other*

law enforcement authority may also be taken over for further investigation either on the request of the State Government concerned or the Central Government or on the direction of a Constitutional Court. As the resources of CBI are limited, administrative arrangements have been worked out vis-à-vis local police as detailed in this Manual and Policy Division instructions as regards registration of cases. The guidelines regarding the type of petty cases, which should normally not be taken up for investigation, are also mentioned in the Manual and instructions of the Policy Division.

10.2 While registering the FIR, the legal requirements of section 154 Cr. P.C. should be fully complied with. If the information is given orally, it shall be reduced into writing verbatim and shall include the answers to any question put to the informant. If a written complaint is received, an exact copy must be reproduced in the FIR. Every such information, whether reduced into writing or given in writing, which forms basis of the FIR, shall be signed by the person giving it. In case, the person is illiterate, his thumb impression will have to be secured. The refusal to sign or give thumb impression, as the case may be, on the First Information Report is an offence under Section 180 IPC."

In the instant case, the first information report has in fact been registered in terms of paragraph 10.1 and 10.2 of the CBI Manual. It has been held in State Vs. N. S. Ghaneswaran (2013) 3 S.C.C. 594that when a member of CBI registers a FIR in accordance with such provisions of CBI Manual, legality thereof cannot be brought into question on that score. That apart, I also do not find any prejudice or failure of justice which has been occasioned to the petitioner in the manner in which the first information report has been registered. It is trite law that defect in the investigation shall not affect a prosecution until and unless such defect is of most fundamental nature and prejudicially affects the accused and occasions failure of justice."

9. Counsel for the CBI by reference to the decision of the Supreme Court in the case of **Kazi Lendup Dorji Vs CBI** reported in **1994 Supp (2) SCC Pg 116** would submit that since the withdrawal of the consent by the State is after the FIR was registered they could proceed with the investigation. At Paragraph 16 of the **Dorji case (Supra)**, it was held as follows:-

"16. Coming to the contention urged by Shri Jethmalani on merits it may be mentioned that Section 21 of the General Clauses Act does not confer a

power to issue an order having retrospective operation. [See *Strawboard Manufacturing Co. Ltd.* v. *Gutta Mill Workers' Union* [1953 SCR 439: AIR 1953 SC 95] (SCR at pp. 447-48).] Therefore, even if we proceed on the basis that Section 21 of the General Clauses Act is applicable to an order passed under Section 6 of the Act, an order revoking an order giving consent under Section 6 of the Act can have only prospective operation and would not affect matters in which action has been initiated prior to the issuance of the order of revocation. The impugned notification dated 7-1-1987, has to be construed in this light. If thus construed it would mean that investigation which was commenced by CBI prior to withdrawal of consent under the impugned notification dated 7-1-1987, had to be completed and it was not affected by the said withdrawal of consent. In other words, the CBI was competent to complete the investigation in the cases registered by it against Respondent 4 and other persons and submit the report under Section 173 CrPC in the competent court. On that view of the matter, it is not necessary to go into the question whether the provisions of Section 21 of the General Clauses Act can be invoked in relation to consent given under Section 6 of the Act."

10. Counsel for the CBI next placed reliance on the decision of the Patna High Court in the case of **Mcdowell Vs State of Bihar** reported in **(2000) 3 BLJR 1847** for the proposition that a notification of the Govt would come into force only when the same comes to the knowledge of the affected person.

11. This Court is inclined to accept the submissions of the CBI, on a conjoint reading of the decision of a coordinate bench in the case of **Binod Kr Kabra (Supra)**, the **Mcdowell decision (Supra)** and the aforesaid **Kazi Lendup Dorji Case (Supra).** Admittedly the FIR was registered prior to the receipt of the communication from the State Government as regards withdrawal of consent under Section 6. The instant proceedings against the petitioner by the CBI are, therefore, not hit by the withdrawal of consent by the State dated 18th November, 2018.

12. A larger question however remains to be addressed i.e. as to whether the Consent of the State Government under Section 6 of the DPSE Act would still be necessary if the Central Government wishes to proceed against its own officials, albeit posted within a State, paid from Central funds and discharging functions under a Central Statute. The true scope and purport of Section 6 of the DSPE Act of 1946 must therefore be addressed and understood. Section 6 and the objects and purpose of the DSPE Act 1946 are set out herein below :-

> "**Section 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 2 [a State, not being a Union territory or railway area], without the consent of the Government of that State."
> **Object of the DSPE Act**: An Act to make provision for the constitution of a special police force in Delhi for the investigation of certain offences in the Union territories for the superintendence and administration of the said force and for the extension to other areas of the powers and jurisdiction of members of the said force in regard to the investigation of the said offences."

The preamble of the DSPE Act, 1946, reads as follows:

> "An Act to make provision for the constitution of a special police force [in Delhi for the investigation of certain offences in [the Union territories]], for the superintendence and administration of the said force and for the extension to other [***] of the powers and jurisdiction of members of the said force in regard to the investigation of the said offences.
> WHEREAS it is necessary to constitute a special police force [in Delhi for the investigation of certain offences in [the Union territories]] and to make provision for the superintendence and administration of the said force and for the extension to other areas [***] of the powers and jurisdiction of the members of the said force in regard to the investigation of the said offences"

13. In **Advance Insurance Co. Ltd Vs. Gurdasmal**, reported in **(1970) 1 SCC 633** the Supreme Court was considering whether the DSPE Act, 1946 was constitutionally valid and whether Delhi Special Police Establishment has jurisdiction to investigate cases in other States. The Supreme Court had the occasion to deal with the history of the DSPE Act, 1946, and it observed as follows:

> "On July 12, 1943 the Governor General enacted an ordinance (XXII 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."

14. In **Vineet Narain Vs. Union of India reported in (1998) 1 SCC Page 226** the Supreme Court issued several directions which were, in effect, meant to ensure that the trust, faith and credibility of the people in the CBI is not eroded. The said directions were thereafter adopted by the Parliament and the DSPE Act, 1946 as amended by the Central Vigilance Commission Act, 2003 (45 of 2003) so as to ensure that the observations and directions of the Hon'ble Supreme Court are addressed. **Paragraphs Nos. 30 & 31** of the judgment are set out hereinbelow.

> *"History of CBI*

30. It is useful to refer at this stage to the history of the CBI. The Special Police Establishment was formed during the World War II when large sums of public money were being spent in connection with the War and there arose enormous potential for corruption amongst the officers dealing with the supplies. An executive order was made by the Government of India in 1941 setting up the Special Police Establishment (SPE) under a DIG in the then Department of War. The need for a Central Government agency to investigate cases of bribery and corruption by the Central Government servants continued and, therefore, the Delhi Special Police Establishment Act was brought into force in 1946. Under this Act, the superintendence of the Special Police Establishment was transferred to the Home Department and its functions were enlarged to cover all departments of the Government of India. The jurisdiction of the SPE extended to all the Union Territories and could also be extended to the States with the consent of the State Governments concerned. Then the SPE was put under the charge of Director, Intelligence Bureau. Later in 1948, a post of Inspector General of Police, SPE was created and the organisation was placed under his charge. The Central Bureau of Investigation was established on 1-4-1963 vide Government of India's Resolution No. 4/31/61-T/MHA. This was done to meet the felt need of having a Central police agency at the disposal of the Central Government to investigate into cases not only of bribery and corruption but also those relating to the breach of Central fiscal laws, frauds in government departments and PSUs and other serious crimes. On enlargement of the role of CBI an Economic Offences Wing was added to the existing Divisions of the CBI. In 1987 two Divisions were created in the CBI known as Anti-Corruption Division and Special Crimes Division, the latter dealing with cases of conventional crimes besides economic offences. In 1994 due to increased workload relating to bank frauds and economic offences a separate Economic Offences Wing was established in CBI with the result that since then the CBI has three Investigation Divisions, namely, Anti-Corruption Division, Special Crimes Division and Economic Offences Division. Further particulars thereof are not necessary in the present context.

31. We are informed that almost all the State Governments have given concurrence for extension of the jurisdiction of the Delhi Special Police Establishment in their States with the exception of only a few. The result is that for all practical purposes, the jurisdiction in respect of all such offences is exercised in the consenting States only by the CBI and not by the State Police. This is the significance of the role of the CBI in such matters and, therefore, technically the additional jurisdiction under the general law of the State Police in these matters is of no practical relevance. The pragmatic effect of the Single Directive is, therefore, to inhibit investigation against the specified category of officers without sanction in accordance with the Single Directive."

15. In the case of **Alok Kumar Verma Vs. Union of India** reported in **(2019) 3 SCC Page 1**, the Hon'ble Supreme Court at **Paragraph 26** has held as follows:-

> **"26.** Shri F.S. Nariman and Shri Dushyant Dave, learned Senior Counsel, who have argued the case for Shri Alok Kumar Verma, Director, CBI and Common Cause have contended that the history of the institutional framework surrounding CBI leading to the statutory enactments in question and the views expressed in the judgment of this Court in *Vineet Narain* [*Vineet Narain* v. *Union of India*, (1998) 1 SCC 226 : 1998 SCC (Cri) 307] , including the operative directions under Article 142 of the Constitution, can leave no doubt that the judicial endeavour should/must always be to preserve, maintain and further the integrity, independence and majesty of the institution i.e. CBI. This is the core intent behind the statutory enactments and the amendments thereto, details of which have been noticed. The Director of CBI is the centre of power in an abundantly powerful organisation having jurisdiction to investigate and to prosecute key offences and offenders having great ramifications and consequences on public life. There can be no manner of doubt that the Director who has been given a minimum assured tenure of "*not less than two years*" must be insulated from all external interference if CBI has to live up to the role and expectations of the legislature and enjoy public confidence to the fullest measure. This is how the provisions of the cognate legislations i.e. the CVC Act, 2003 and the DPSE Act, 1946 (as amended), must be interpreted, according to the learned counsel."

16. The relevant provisions of Article 246 of the Constitution of India are set out hereinbelow.

> *"**Seventh Schedule (Article 246)***
> ***List II.- State List***
> ***Entry 2**: Police (including railway and village police) subject to the provisions of entry 2A of List I.]*
> ***List I.- Union List***
> ***Entry 2A:** Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.]"*
>
> ***Entry 8:** Central Bureau of Intelligence and Investigation.*

Entry 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."*

17. In the Doctrine of "Pith and Substance", Pith means 'true nature' or 'essence of something'. Substance means 'the most important or essential part of something'. The Doctrine of Pith and Substance postulates that where the question arises of determining whether a particular law relates to a particular subject (mentioned in one List or another), the court looks to the substance of the matter. Thus, if the substance falls within Union List, then the incidental encroachment by the law on the State List does not make it invalid.

18. This is essentially a Canadian Doctrine now firmly entrenched in Indian Constitutional Jurisprudence. This doctrine found its place first in the case of **Cushing Vs. Dupey, 1880 UKPC 22**. In this case the Privy Council evolved the doctrine laying down that for deciding whether an impugned legislation was intra vires, regard must be had to its **pith and substance**.

19. The doctrine has been applied in India also to provide a degree of flexibility in the otherwise rigid scheme of distribution of powers. The reason for adoption of this doctrine is that if every legislation were to be declared invalid on the grounds that it encroached powers, the powers of the Parliament would be drastically circumscribed.

20. In **Jilubhai Nanbhai Vs State of Gujarat and Anr. reported in 1995 (Suppl) 1 SCC 596** the Supreme Court at paragraph 7 has held as follows;-

"It is settled law of interpretation that entries in the Seventh Schedule are not powers but fields of legislation. The legislature derives its power from **Article 246** and other related articles of the Constitution. Therefore, the power to make the Amendment Act is derived not from the respective entries but under Article 246 of the Constitution.
The language of the respective entries should be given the widest scope of their meaning, fairly capable to meet the machinery of the Government settled by the Constitution. Each general word should extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. When the vires of an enactment is impugned, there is an initial presumption of its constitutionality and if there is any difficulty in ascertaining the limits of the legislative power, the difficulty must be resolved, as far as possible in favour of the legislature putting the most liberal construction upon the legislative entry so that it may have the widest amplitude."

21. In **Prafulla Kumar Mukherjee Vs. The Bank of Commerce, (1947) 49 Bom LR 568**, the Bombay High Court explained a situation in which a State Legislature dealing with any matter may incidentally affect any Item in the Union List. The Court held that whatever may be the ancillary or incidental effects of a Statute enacted by a State Legislature, such a matter must be attributed to the Appropriate List according to its true nature and character.

22. Thus, we see that if the encroachment by the State Legislature is only incidental in nature, it will not affect the Competence of the State Legislature to enact the law in question. Also, if the substance of the enactment falls within the Union List then the incidental encroachment by the enactment on the State List would not make it invalid. There is no reason as why the same principle cannot be applied to the Central Government and the Central Parliament.

23. However, the situation relating to Pith and Substance is a bit different with respect to the Concurrent List. If a Law covered by an entry in

the State List made by the State Legislature contains a provision which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to the provisions of any existing law with respect to that matter in the Concurrent List, then the repugnant provision in the State List may be void unless it can coexist and operate without repugnancy to the provisions of the existing law.

24. In **State of Bombay And Another Vs. F.N. Balsara, 1951 AIR 318, 1951 SCR 682** the Supreme Court applied the Doctrine of Pith and Substance and said that it is important to ascertain the true nature and character of legislation for the purpose of determining the List under which it falls. In the said case the Hon'ble Supreme Court was concerned with the legislative competence of the Province of Bombay to enact the Bombay Provincial Act, 1949. It was argued by the respondent writ petitioner that the same fell under Entry 19 of the list I and not within the scope of Entry 31 of List II. The challenge was repealed. The Court went on to hold at **Paragraph 13 as follows.**

> **"13.** Since the enactment of the Government of India Act, 1935, there have been several cases in which the principles which govern the interpretation of the Legislative Lists have been laid down. One of these principles is that none of the items in each list is to be read in a narrow or restricted sense [Vide *United Provinces* v. *Atiqa Begum*, (1940) FCR 110 at 134] . The second principle is that where there is a seeming conflict between an entry in List II and an entry in List I, an attempt should be made to see whether the two entries cannot be reconciled so as to avoid a conflict of jurisdiction. This principle has been stressed in a number of cases by the Federal Court as well as by the Privy Council. In *In re The Central Provinces and Berar Act 14 of 1938* [(1939) FCR 18] the question arose as to whether a tax on the sale of motor spirits was a tax on the sale of goods within Entry 48 of the Provincial

List or a duty of excise within Entry 45 of the Federal List. Dealing with the difficulty which arose in that case, Gwyer, C.J. observed as follows:

> "Only in the Indian Constitution Act can the particular problem arise which is now under consideration; and an endeavour must be made to solve it, as the Judicial Committee have said, by having recourse to the context and scheme of the Act, and a reconciliation attempted between two apparently conflicting jurisdictions by reading the two entries together and by interpreting, and, where necessary, modifying, the language of the one by that of the other. If indeed such a reconciliation should prove impossible, then, and only then, will the non obstante clause operate and the federal power prevail; for the clause ought to be regarded as a last resource, a witness to the imperfections of human expression and the fallibility of legal draftsmanship."

25. In **Mt. Atiqa Begam and Anr. Vs. Abdul Maghni Khan and Ors., AIR 1940 All 272** the Allahabad High Court held that in order to decide whether the impugned Act falls under which entry, one has to ascertain the true nature and character of the enactment i.e. its 'Pith and Substance'. The court further said that *"it is the result of this investigation, not the form alone which the statute may have assumed under the hand of the draughtsman, that will determine within which of the Legislative Lists the legislation falls and for this purpose the legislation must be scrutinized in its entirety*".

26. In view of the aforesaid decisions and the principles emerging from the **Vineet Narain** Case (Supra), the DSPE Act 1946 as amended by the CVC Act of 2003 and the Lokayukta Act of 2013 and the decision in the **Alok Kumar Verma** case (Supra), the Doctrine of Pith and Substance is applied in the instant case to determine whether the investigation by the CBI would transgress on the powers of the State conferred under the under Entry 2

under the II list in the VIIth Schedule to the Constitution in terms of Article 246 (3) of the Constitution of India.

27. Article 246 only prescribes the powers of the Parliament and the State legislature to enact laws. The areas prescribed in List I are within the exclusive domain of the Parliament. List II is within the domain of the State legislature. List III enumerates areas which both the Parliament and the State can legislate. The Constitution inter alia aims to preserve the Federal Structure through the above provisions. It is not however a rigid demarcation. The framers of the Constitution were cautious to prescribe as above only in the context of the legislative powers of the Centre and the State. The area of operation of the Central Government and cannot be curtailed by any Central or State legislation.

28. The aforesaid view is fortified by the fact that the Parliament legislates in respect of the Nation as a whole which includes the State, but the State has to confine its powers to matters affecting the people only in the State and arising out the State's functions.

29. The following emerges from the aforesaid decisions and upon a fair consideration of DPSE Act, 1949 and Article 246 and the Seventh Schedule of the constitution of India.

a) Policing in the Country is defined in the Police Act 1861 is a State subject.

b) The DSPE Act 1946 created the DSPE which is governed by Section 4 of the 1946 Act.

c) The DSPE is now known as the CBI (**Vineet Narayan** Supra)

d) The CBI exercises jurisdiction over all States in India subject to their consent and Union Territories.

e) The DSPE Act 1946 came to be amended by reason of the Central Vigilance Commission Act 2003 and the Lokayukta Act of 2013.

f) With the enactment of the Central Vigilance Commission Act 2003 the CBI came to be controlled by the CVC.

g) The CBI has statutory status under the control of the CVC in terms of Section 4, 6 and 8 of the CVC Act of 2003.

h) The CBI Manual framed on the lines of the Cr.P.C. also has statutory force and the investigation by the CBI are to be strictly guided by the said Manual.

i) Policing Powers are equally divided between the Central Government by reason of the DSPE Act 1946, as amended by CVC Act 2003, the decision of the Hon'ble Supreme Court in the case of **Vineet Narayan** (supra) read with Entry 8 and 80 of the list I of the Seventh Schedule of the Constitution of India.

30. The action of the Central Government in desiring investigation into the acts and omissions of its officer who functioned under a statute which central government has enacted must be outside the scope of Section 6 of the DSPE Act, 1946. Admittedly the EPF and MP Act 1952 was passed by the Central Legislature in the interest of the employees of establishments in the country as a whole. The said Act aims at conferring a uniform benefit to all such employees in the country irrespective of any state law to the Contrary. It is a beneficial piece of legislation for securing the future of all employees and promotes compulsory savings and deposits attracting penalties for breach. Such a vital legislation requires the enforcing officials to Act diligently, scrupulously and with the utmost integrity. A failure on the part of the authorities under the said Act to discharge their duties would not only jeopardise the future of the employees and encourage unscrupulousness in employers across the country.

31. The Central Government thus has a national responsibility in zealously regulating the conduct of the persons vested with the authority to enforce Central Legislations in general including the said 1952 Act. The national interest sought to be secured and achieved bears a rational nexus with desire of a Central Government conducting an investigation of this nature through a central agency. The consequences of the Acts and omissions sought to be investigated transcend boundaries of the State.

32. It would be seriously fallacious to question the investigation from the sole stand point of Entry 2 of List II of the VIIth Schedule of the Constitution. The question to be posed is why not the CBI.

33. The withdrawal of general consent restricts the power of the Central Government and CBI from instituting new cases in the State concerned. However, as decided by the Supreme Court in **Kazi Lhendup Dorji** (supra), the withdrawal of consent applies prospectively and, therefore; existing cases will be allowed to reach their logical conclusion. The CBI can also seek or get specific consent in individual cases from the State government.

34. In most cases, States have given consent for a CBI probe against only Central government employees. The agency can also investigate a Member of Parliament. Apart from Mizoram, West Bengal and Andhra Pradesh, the agency has consent from all other States under Section 6 of the 1946 Act.

35. The Supreme Court clarifies the position of law in **Kazi Lhendup Dorji case (supra)**. The court reasoned that the State government's withdrawal should not be allowed to stall a pending case.

36. In 1961, the Supreme Court in the Major E.G. Barsay judgment held that "no member of the Establishment (CBI) can exercise powers and jurisdiction in any area in a State without the consent of the government of that State". The act of withdrawal of consent can be judicially reviewed. Besides, withdrawal of consent is no bar for High Court under Article 226 to order a CBI investigation.

37. The cases relied upon by counsel for the petitioner Mr Ganguly, being **Kazi Lhendup Dorji v. CBI, 1994 Supp (2) SCC 116 ;S.K. Shukla v. State of U.P., (2006) 1 , CC 314 : (2006) 1 SCC (Cri) 366 at page 327; Mayawati v. Union of India, (2012) 8 SCC 106 at page 122 ; Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya [(2002) 5 SCC 521: 2002 SCC (L&S) 775]**; **Association For Protection etc Vs State Of West Bengal And Ors., 2007 (4) CHN 842, CRC 3156-3158 of 2016 dated 07-09-2017** of the **AP and Telengana High Court** in the case of **Jayanti Vijaya Ratna Vs CBI** were cases which involved investigation by the CBI into persons who were functionaries or officials under the State Government. The said decisions are not relevant to the facts of the instant case. The accused petitioner is an official of the Central Government functioning under a Central Statute. In some of the decisions the Supreme Court was dealing with the powers of the High Court and Supreme Court to order investigation by the CBI under Article 226 and 32 of the Constitution of India, which is not the issue relevant to the case at hand.

38. The Patna High Court in **Kanwal Tanuj vs The State Of Bihar,** reported in **2018 SCC OnLine Pat 2096** a Single Bench of the Patna High Court has held as follows :

> **"45**. The federal structure of the Indian Constitution would not envisage that a case of corruption where the allegations are there that the funds of the Central Government and a Public Sector Undertaking provided to a Government Company have been siphoned by a Chief Executive of the government company which was incorporated or floated as an agent of the Public Sector Undertaking and the Central Government through Ministry

of Railways should not proceed and cannot be continued only because certain part of the offence under investigation has been committed in an area falling in a particular State. Section 6 saves the State from encroachment in the matter of policing in the area falling under the State. This is by virtue of Entry 2 List II of the 7 the Schedule of Constitution of India. However, such encroachment is prohibited only when it is found that the Central Government has been looking for an investigation through the CBI in a matter which would not concern the Central Government and it is purely a matter falling under Entry 2 List II of the 7th Schedule of Constitution of India.

46. Once the offences or the classes of offences are covered under the notification issued by the Central Government in terms of Section 3 and the offences alleged are said to be in respect of the funds of the government being Patna High Court Cr. WJC No.879 of 2018 dt.17-09-2018 siphoned through its agent which is a corporate body and a government company through its Chief Executive Officer and the registered office of the said corporate body is in the Union Territory of Delhi, the institution of the FIR as well as the investigation taken up pursuant thereto cannot be stopped and no consent of the government of Bihar would be required to investigate the persons involved in commission of the offence. Such person may be an officer working in connection with the affairs of the State of Bihar, but where the offences alleged are in connection with the funds of the Government of India through its agent a government company having its registered office at Union Territory of Delhi, it would be immaterial that any other person involved in commission of the said offence is working in connection with the affairs of the State Government. In the facts of the present case, this Court is of the considered opinion that no consent of the State Government in terms of Section 6 of the DSPE Act, 1946 would be required."

39. This Court cites with approval the aforesaid decision. The said decision was also relied upon with approval by another Single Bench of the Delhi High Court in the case of **Anand Agarwal Vs Union of India** reported in **2018 SCC OnLine Del 11713 : (2018) 253 DLT 699 (DB)**.

40. This Court cannot but take judicial notice of deteriorating relations between the Centre and some States in the Union. This may result in

damaging the basic fabric of Federal polity of this nation and defeat and/or compromise the harmonious division of powers. It must however be noticed that the State of West Bengal has not expressed any formal objection to any investigation by the Centre against Central Government Officials at any point of time.

41. 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. This Court is conscious of the limited jurisdiction of this court under Section 482 of the CrPC and does wish to enter into the question of propriety of withdrawal of consent which existed for 30 years.

42. The Revisional Application is thus dismissed.

43. There shall be no order as to costs.

44. Urgent Photostat Certified server copy of this judgment, if applied for, be supplied to the parties on urgent basis.

(Rajasekhar Mantha, J.)