

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 03rd JANUARY, 2022

IN THE MATTER OF:

+ **CRL.M.C. 878/2021 & CRL.M.A. 4402/2021 (Stay)**

DR SANJEEV KUMAR RASANIA

..... Petitioner

Through: Mr. Somiran Sharma and Mr. Tabarak Hussain, Advocates.

versus

CBI & ORS.

..... Respondents

Through: Mr. Prasanta Verma, SPP for CBI. Mr. Mukul Gupta, Senior Advocate with Mr. Tushar Gupta, Mr. Parinay Gupta and Mr. Sumit Kumar Mishra, Advocate for Respondent No.4

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition has been filed under Section 482 Cr.P.C. seeking quashing of criminal proceedings against the Petitioner herein in Case No. CBI/0000048/2019 pending before Ld. Special Judge (P.C. Act), CBI, Rouse Avenue, arising out of FIR No. 006/2010/A0014/ACB/Lucknow under Section 120B read with Sections 420/468/471 of the Indian Penal Code (*hereinafter*, "IPC") and Section 13(2) read with Section 13(1)(D) of the Prevention of Corruption Act, 1988 (*hereinafter*, "the P.C. Act").

2. The facts, in brief, leading up to this petition as follows:

- a) It is stated that information was received that some unknown officials from Ministry of Health and Family Welfare (*hereinafter*, "MoHFW"), Government of India, had entered

into a criminal conspiracy with Keshav Kumar Aggarwal, Chairman, Rohilkhand Medical College, Bareilly (*hereinafter*, “the College), and others, for the renewal of permission for admission of 100 MBBS students, despite gross violations of Medical Council of India (*hereinafter*, “MCI”) regulations, as per which renewal of permission is granted by the Union Government until facilities at the medical college and the hospital are completed in accordance with MCI norms.

- b) It is stated that MoHFW *vide* letter dated 14.07.2006 granted permission for the admission of the 1st batch of 100 MBBS students to the College, and this permission was renewed on 17.08.2007 for admission of the 2nd batch of 100 students. However, inspections conducted by MCI on 20.05.2008 revealed that the prescribed norms were not being met, and the Executive Committee (*hereinafter*, “EC”) of MCI recommended for the matter to be referred to the police authorities for registration of FIRs. Thereafter, another inspection was conducted on 19.08.2008, however, as the deficiencies persisted, the EC on 25.08.2008 recommended the Union Government to not renew permission for admission of 3rd batch of 100 students. The MoHFW agreed with the recommendations and communicated to the College *vide* letter dated 12.09.2008 that it would not renew permission.
- c) It is stated that aggrieved by the decision, the College approached the Supreme Court *vide* W.P.(C). 426/2008, wherein after submissions of the then Ld. Additional Solicitor

General, the Supreme Court observed *vide* Order dated 26.09.2008 that the facilities were inadequate even for the purpose of a reduced intake of students, and therefore, permission could not be given. However, on 26.09.2008, the MoHFW granted renewal for admission of a 3rd batch of 100 students for 2008-2009, stating that an inspection had been conducted on 25.09.2008 by a Central Team constituted by MoHFW who had noted that adequate facilities were available at the College. This Central Team, comprising Dr. Vindu Amitabh and Dr. S.K. Rasania (Petitioner herein) had conducted an investigation and in their report, which was favourable to the College, noted that position of the faculty had been accepted on the basis of undertaking given by the college authorities.

- d) It is stated that the deputation of the Central Team by MoHFW was done with a *mala fide* intention in order to obtain a favourable inspection report, and that a subsequent inspection conducted by MCI on 01.10.2008, i.e. after a lapse of five days, found that the inadequate facilities were still persisting. Accordingly, MCI issued a letter dated 06.10.2008 to the Union Government to recall the letter of permission dated 26.09.2008. It is stated that no action has been taken by the Union Government on the same.
- e) On the grounds that the officers of MoHFW connived with the Chairman of the College and others in a bid to grant permission for admission at the College, an FIR was registered and the investigation was entrusted to the CBI. Chargesheet was

thereafter filed by CBI, with Dr. Keshav Kumar Agrawal, Chairman, Rohilkhand Educational Trust as Accused No.1, Dr. K.V.S. Rao, Dy. Secretary, Cabinet Secretariat, Govt. of India as Accused No.2, Dr. Ambumani Ramadoss, the then Union Minister of Health and Family Welfare as Accused No.3, Dr. Vindu Amitabh as Accused No.4, and Dr. S.K. Rasanian (Petitioner herein) as Accused No. 5. The chargesheet revealed that at that stage, a criminal conspiracy between the accused officers of MoHFW and the College authorities had surfaced. It stated that Accused No.2 had not obtained prior approval before constituting the Central Team and that Accused Nos. 4 and 5 (Petitioner herein) conducted the investigation on 25.09.2008, and submitted the report on 26.09.2008. The chargesheet states the report concluded that the facilities were adequate for pre/para and clinical facilities, infrastructure, medical and paramedical deficiencies of previous inspection had been filled as per the MCI norms. It is stated that the investigation disclosed that the deficiencies were covered up by Accused Nos.4 and 5 (Petitioner herein) by clubbing together of various sub-categories, and that by glossing over the glaring deficiencies, they were a party to the larger conspiracy.

- f) It is stated that even the Supreme Court was not made aware of the constitution of the Central Team, and the subsequent grant of permission, was contrary to the Order rendered on the very same day by the Supreme Court, i.e. on 26.09.2008, wherein it had noted that the facilities were inadequate. Further, on

04.10.2008, the then Ld. ASG had sent a letter to the Secretary, MoHFW, expressing his reservations regarding the manner in which the Union Government had proceeded to send a Central Team and had recommended withdrawal of the permission. He further sent a letter to the then Union Minister (Accused No. 3) regarding the wide disparity in the findings of the Central Team and the MCI Inspecting team. Another letter dated 13.10.2008 was sent by the then Ld. ASG to Accused No.3 suggesting that a new team be constituted for the investigation and that the same should be videographed. Pursuant to the suggestion, another Central Team was constituted by the MoHFW which conducted an investigation on 20.10.2008 which found no deficiency in the College. On the basis of this investigation as well as the submission of the then Ld. ASG, the Supreme Court on 24.10.2008 concluded that there was no need to disturb the permission already granted.

- g) It is stated that on 07.10.2015, the Ld. Special Judge, after a careful consideration of the material placed before him along with the submissions of the parties, found that Accused Nos. 4 and 5 (Petitioner herein) could not be stated to have committed any illegal act in collusion with the Ministry or the College authorities, and therefore, they were discharged from the case. The Ld. Special Judge, however, found sufficient material to frame charges against Accused Nos. 1 to 3. Thereafter, on 23.12.2015, the CBI filed CRL. REV. P. No. 25/2016 before this Court against Order dated 07.10.2015 discharging Accused

Nos. 4 and 5 (Petitioner herein). Accused Nos. 1, 2 and 3 filed CRL. M.C. 4480/2016, CRL.M.C. 688/2017 and CRL.M.C. 4443/2015 before this Court seeking quashing of the proceedings.

- h) It is stated that *vide* common Judgement dated 29.07.2019 in CRL. REV.P No. 25/2016, CRL.M.C. 688/2017, CRL. M.C. 4408/2016 and CRL. M.C. 4443/2015, this Court set aside the Order of the Ld. Trial Court dated 07.10.2015. In view of the submissions that there was videography of the inspection conducted on 20.10.2008 that had not been made part of the chargesheet, a direction was given to the Ld. Trial Court to hear the parties on merit afresh after duly supplying the copy of the videography allegedly seized by the CBI to all the accused persons. SLP (CRL.) No.10340/2019 against this Judgement dated 29.07.2019 filed by Petitioner herein before the Supreme Court was dismissed *vide* Order dated 18.11.2019 on the ground that the Judgement was in the nature of a remand order.
- i) It is stated that the matter was heard again by the Ld. Trial Court and the CBI filed an Affidavit dated 19.10.2020 therein stating that all the documents related to the case had been transferred to CBI, A.C.I., New Delhi by S.P., CBI, ACB, Lucknow (as per letter dated 23.09.2019). Further, I.O. of the case, Inspector Surendra Rai (now retired) had also informed that no such CD had been seized during the investigation of the case. MoHFW also informed *vide* letter dated 28.09.2020 that no CD/Cassette of videography was available in their

file/record. Further, MCI *vide* letter no. MCI-34(41)(Gen)/2019-Med/187380 dated 07.02.2020, informed CBI that they had not conducted any inspection of the said college on 20.10.2008.

- j) The Affidavit dated 19.10.2020 states that on enquiry from Dr. Anurag Srivastava, HOD, Surgical AIIMS, New Delhi (who was a team member of the Central Team that had conducted an inspection on 20.10.2008), it was found *vide* letter dated 11.09.2020 that the Central Team had prepared a video recording of the inspection. However, further clarification regarding the same is awaited. Additionally, response from Dr. Rajendra Singh and Dr. Arvindan Nair (also members of the Central Team) regarding the videography of the inspection are awaited.
- k) CBI further stated in its Affidavit dated 19.10.2020 that the allegations in the present case pertained to inspection conducted on 25.09.2008, and therefore, inspection on 20.10.2008 was not relevant. It stated that CBI intended to file an application before this Court for modification of judgement dated 29.07.2019 with regard to the Court's observation on the importance of the videography on the ground that it had not been confirmed and established whether videography was carried out. Accordingly, this statement of the CBI was recorded by the Ld. Trial Court on 20.10.2020. The Petitioner herein also filed an application before the Ld. Trial Court under Section 227 Cr.P.C. seeking discharge on the reasons recorded in the Ld. Trial Court Order dated 07.10.2015. In view of the application filed by the CBI

before the Ld. Trial Court stating that it had filed an application for modification in Order dated 29.07.2019, the Petitioner's application under Section 227 Cr.P.C. was not taken up for hearing. This application of the CBI before this Court was dismissed on 23.02.2021 on ground of the bar under Section 362 Cr.P.C.

- 1) The Petitioner herein (Accused No.5) has now approached this Court by way of a petition under Section 482 Cr.P.C. seeking quashing of the criminal proceedings initiated against him.

3. Mr. Somiran Sharma, learned Counsel appearing for the Petitioner, submits that the Order dated 29.07.2019, wherein this Court had remanded the matter back to the Ld. Trial Court thereby setting aside the Order 07.10.2015 discharging the Petitioner, did not direct an open remit, but only granted conditional remit. He submits that the condition that was stated in the Order dated 29.07.2019 was that there was a videography of the inspection dated 20.10.2008 and that the same had to be provided to the accused before the matter being considered afresh. Mr. Sharma submits that as per the Affidavit filed by the CBI dated 19.10.2020, no such videography is available and that even if, for *arguendo* purposes, such a videography exists, the same is not relevant as the alleged incident occurred on 26.09.2008. The learned Counsel for the Petitioner, therefore, submits that the very basis for remanding the matter back to the Ld. Trial Court goes away.

4. Mr. Sharma, learned Counsel appearing for the Petitioner, submits that as the CBI had failed to verify the records pertaining to the existence of the videography and had not opposed the request made by Accused Nos. 1,

2, and 3 to bring the videography on record, this Court had been persuaded to believe the existence of the videography. As a result, conditional remit Order dated 29.07.2019 had been passed which prejudiced the rights of the Petitioner herein who had already been discharged by the Ld. Trial Court *vide* Order dated 07.10.2015. He submits that this Court had erroneously set aside the discharge of the Petitioner herein as well on the mistaken ground that the inspection had been videographed.

5. Mr. Somiran Sharma argues that the Petitioner herein is entitled to be discharged on the same findings of the Ld. Trial Court that have been recorded in Order dated 07.10.2015 and the only reason the said Order had been set aside was because the CBI had not specifically denied the existence of such videography. Mr. Sharma submits that it would be a miscarriage of justice if the Petitioner herein is not granted the benefit of the findings in Order dated 07.10.2015 for the purpose of quashing of the criminal proceedings against him.

6. Mr. Sharma has placed reliance on the following judgements:

- i. Madhu Limaye v. The State of Maharashtra, (1977) 4 SCC 551.
- ii. Raj Kapoor & Ors. v. State & Ors., (1980) 1 SCC 43,
- iii. State of A.P. v. Golconda Linga Swamy & Anr., (2004) 6 SCC 522,
- iv. Central Bureau of Investigation v. Ravi Shankar Srivastava, IAS & Anr., (2006) 7 SCC 188,
- v. Pankaj Kumar v. State of Maharashtra & Ors., (2008) 16 SCC 117, and
- vi. Gian Singh v. State of Punjab & Anr., (2012) 10 SCC 303,

to submit that the inherent power of the High Court under Section 482 Cr.P.C. is an overriding provision and that nothing in the Cr.P.C. can limit or restrict this inherent power. He argues that the exercise of such a power of the High Court is meant to prevent the abuse of the process of any court or to otherwise secure the ends of justice. On the basis of this, Mr. Sharma prays for this Court to quash the criminal proceedings that are subsisting against the Petitioner herein.

7. *Per contra*, Mr. Prasanta Varma, learned SPP appearing for CBI, submits that the arguments pertaining to the role of the Petitioner herein had been duly discussed during the hearing of CRL. REV. P. 25/2016, and therefore, it could not be said that the remand order was conditional and limited to Accused Nos. 1, 2 and 3 only. The learned SPP states that SLP (CRL.) No. 10340/2019 preferred by the Petitioner against Judgement dated 29.07.2019 before the Supreme Court had been dismissed. Further, the application for modification filed by the CBI before this Court had also been dismissed. Mr. Varma, therefore, submits that the instant petition should not be entertained in view of the above.

8. The learned SPP appearing for CBI informs this Court that the CBI intends to file a petition against the Order dated 29.07.2019 in wake of the information that has come to light with regard to the existence of videography of the inspection conducted on 20.10.2008. The learned SPP, contends that, therefore, the instant petition should be dismissed.

9. Heard Mr. Somiran Sharma, learned Counsel for the Petitioner, Mr. Prasanta Varma, learned SPP for the CBI, and perused the material on record.

10. The main issue that arises in the instant case is whether this Court can

render an order under Section 482 Cr.P.C. that will override the bar instituted under Section 362 Cr.P.C. To delve into this issue, it would be pertinent to reproduce Section 482 Cr.P.C. as well as Section 362 Cr.P.C. here:

“Section 482 in The Code Of Criminal Procedure, 1973

482. Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

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362. Court not to alter judgment.—Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.”

11. A plain reading of Section 482 Cr.P.C. showcases that nothing in the Cr.P.C. shall be deemed to limit or affect the inherent powers of the High Court. However, the embargo that lies under Section 362 Cr.P.C. which prohibits a Court from altering or reviewing its judgement or final order disposing of a case, except to correct a clerical or arithmetical error, applies to Section 482 Cr.P.C. as well. The Supreme Court has time and again held that the inherent jurisdiction of the High Court cannot be invoked to override the bar of review under Section 362 Cr.P.C. In the case of Simrikhia v. Dolley Mukherjee, (1990) 2 SCC 437, the Supreme Court had observed as follows:

"3. The learned counsel for the appellant contended before us that the second application under Section 482 CrPC was not entertainable, the exercise of power under Section 482, on a second application by the same party on the same ground virtually amounts to the review of the earlier order and is contrary to the spirit of Section 362 of the CrPC and the High Court was, therefore, clearly in error in having quashed the proceedings by adopting that course. We find considerable force in the contention of the learned counsel. The inherent power under Section 482 is intended to prevent the abuse of the process of the court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. If any consideration of the facts by way of review is not permissible under the Code and is expressly barred, it is not for the court to exercise its inherent power to reconsider the matter and record a conflicting decision. If there had been change in the circumstances of the case, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different conclusion is in effect a review, which is expressly barred under Section 362.

XXX

5. Section 362 of the Code expressly provides that no court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error save as otherwise provided by the Code. Section 482 enables the High Court to make such order as may be

necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction.

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7. The inherent jurisdiction of the High Court cannot be invoked to override bar of review under Section 362. It is clearly stated in Sooraj Devi v. Pyare Lal [(1981) 1 SCC 500 : 1981 SCC (Cri) 188] , that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code. The law is therefore clear that the inherent power cannot be exercised for doing that which cannot be done on account of the bar under other provisions of the Code. The court is not empowered to review its own decision under the purported exercise of inherent power. We find that the impugned order in this case is in effect one reviewing the earlier order on a reconsideration of the same materials. The High Court has grievously erred in doing so. Even on merits, we do not find any compelling reasons to quash the proceedings at that stage."

12. The purpose of Section 362 Cr.P.C. is that once a Court delivers a judgement or a final order disposing of a case, that judgement becomes *functus officio*, and it cannot be reconsidered or modified [See also Sunil Kumar v. State of Haryana, (2012) 5 SCC 398]. The inherent power of the Court cannot be exercised for doing something that is specifically prohibited by the Cr.P.C. as doing so would be a violation of the law laid down by the

Parliament and the precedents of the Supreme Court. Further, Section 482 Cr.P.C. does not confer any new powers on the High Court; it only saves the inherent power which the Court possessed before the commencement of the Code. In State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89, the Supreme Court noted as under:

*"6. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not*

function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

13. Therefore, while it is true that Section 482 Cr.P.C. does confer wide powers to the High Court to make such orders as may be necessary to give effect to any order under the Cr.P.C. or to prevent the abuse of process of any Court or otherwise to secure the ends of justice, but the expressions "abuse of the process of law" or "to secure the ends of justice" do not confer unlimited jurisdiction on the High Court. The alleged abuse of the process of law or the ends of justice can only be secured in accordance with law and not otherwise. Further, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section

482 Cr.P.C. in cases where there is no express provision empowering the High Court to achieve the said object. It cannot be invoked in respect of any matter covered by specific provisions of Cr.P.C. or if its exercise would infringe any specific provision of the Cr.P.C. [See Arun Shukla v. State of U.P., (1999) 6 SCC 146].

14. In the instant case, a reading of the common Judgement dated 29.07.2019, wherein this Court had set aside an Order on charge passed by the Ld. Trial Court dated 07.10.2015, reveals that the Judgement had been passed on the basis of the submission during the course of hearing that while passing its Order dated 07.10.2015, the Ld. Trial Court had failed to consider the videography of the inspection of the Central Team and that the same had been seized by the CBI. The relevant portion reads as under:

“16. Learned Senior counsel Mohit Gupta on behalf of Petitioner/ Accused No . 3 Anbumani Ramadoss has submitted that the Court below while passing the impugned order on framing of charge skipped the relevance of videography conducted by Central Team, same was seized by CBI. He further submitted that there is no allegation against the petitioner Anbumani Ramadoss that he instructed anyone to commit any offence in the manner so prescribed.”

(emphasis supplied)

15. The submission had not been refuted by the CBI. This Court had proceeded on the basis that such a videography was in existence, and had accordingly remanded the matter back to the Ld. Trial Court after directing the said videography to be made available to the accused. This Court had also observed that the factum of videography had been mentioned in the statement of the witness and, thus, had concluded that the videography was

material evidence that would be needed to reach the conclusion of the matter.

16. Thereafter, when the Ld. Trial Court commenced hearing the matter *de novo*, the CBI filed an Affidavit dated 19.10.2020 before the learned Trial Court wherein it stated that such a videography was not in its custody, and that queries regarding the same had not managed to shed light on its existence.

17. Furthermore, the CBI also stated that the videography, if in existence, was irrelevant as the alleged incident had taken place on 26.09.2008 while the inspection of which the video had been taken was conducted on 20.10.2008. In view of this revelation, the CBI had filed an application for modification of the common Judgement dated 29.07.2019, however, the same was dismissed by this Court *vide* Order dated 23.02.2021 on the ground that since the entire remand order was based on the fact that there existed a videography of the inspection that had not been denied by the CBI, this Court was of the opinion that application of the CBI for modification of the common Judgement dated 29.07.2019 would be hit by the bar under Section 362 Cr.P.C.

18. It is pertinent to note that in the instant case, the same bar under Section 362 Cr.P.C. is applicable and cannot be overridden by Section 482 Cr.P.C. This Court is of the opinion that if any order is passed in consequence to this prayer, it would invariably amount to review which is barred under Section 362 Cr.P.C. and is not permissible even under the inherent power possessed by this Court. The provisions under Section 482 Cr.P.C cannot be invoked to set aside the judgment dated 29.07.2019 and the revision of the CBI cannot be dismissed. This Court cannot sit as an

Appellate Court over the judgment dated 29.07.2019 and set it aside which can only be done by the Apex Court.

19. Another issue which has arisen and must be urgently addressed to ensure that there is no travesty of justice is the existence of the videography of the inspection conducted by the Central Team on 20.10.2008 in pursuance of the suggestions rendered by the then Ld. ASG. The contradiction in various statements and the CBI's lack of resistance with regard to the existence of the videography during the hearing of CRL. M.C. No. 4443/2015, CRL. M.C. No. 4480/2015, CRL. M.C. No. 688/2017 and CRL.REV.P. 25/2016 raises the query as to whether the videography exists, and if it does exist, then who has custody of the same.

20. A perusal of the material on record indicates that the said videography has been referenced multiple times. It is to be noted that the aspect of videography had first been mentioned in the Ld. ASG's letter to Accused No.3 dated 13.10.2008 wherein it had been suggested that, in light of the disparity between the findings of the team deputed by MCI and the Central Team, a new inspection team should be constituted and the inspection conducted by them should be videographed. The relevant extract of the letter dated 13.10.2008 is as follows:

" . . . I had pointed out that there is a serious concern of lack of transparency in the grant of recommendations by the Medical Council of India as well as the permissions granted by the Central Government in the setting up of medical colleges. I had expressed my very deep concern that standards in private medical colleges have to be firmly in order list there be a serious threat to the lives of citizens who would require treatment at the hands of doctors. In my view, the public good

and public health is the foremost and primary as well as overriding consideration. In my view, it is the Medical council of India and the Central Government who are jointly responsible for the quality of medical education and consequent public health. However, I may make it clear that while there may be contest with reference to areas where one should have supremacy over the other, I am not persuaded to advise that the Central Government should reiterate the permission granted I favour of Ms Index Medical college, Indore as well as Rohilkhand Medical College, Up. As I said, the wide disparity between the MCI and the team deputed by the Central Government raise serious questions including the question which one is authentic for the purpose of according admission. I confirm that in a meeting with officers of the Ministry of health Welfare at which meeting Health Secretary was present. I had advised in order to satisfy myself before advancing further submissions in respect of the said two collets that a new team of senior and distinguished professors of medical/medical education in the all India Institute of Medical Science, PG], Chandigarh and Christian Medical College, Vellore be constituted to conduct inspection and give a report for both the colleges. I also insisted that the said inspection should be clearly video graphed including the interaction between the members of the inspection team and the teachers/faculty . . . " (emphasis supplied)

21. The existence of the videography was also elucidated in the statement of Shri Surendra Kumar, Section Officer, MoHFW, Government of India, and the relevant extract of the statement is reproduced as under:

*" . . . On dated 20.10.2008, the three members central team examined the Rohilkhand Medical College, Bareilly. They did not find of having any deficiency during inspection. This was mentioned on note sheet at S.No. 64(FR)p-7-74/cor. and submitted for approval. On this note sheet on dated 22.10.2008 Shri K.V.S. Rao (the then Dy. Secretary) has written a note that **"The inspection was videographed. The report is positive and we may accept the same.** Hence the Ministry decision to grant renewal of permission to the said college may remain unchanged. On dated 22.10.2008 Shri Devasheesh Panda (Joint Secretary), on dated 23.10.2008 Shri Naresh Dayal (the then Secretary), on dated 23.10.2008 Shri Ambumani Ramdas (the then Minister of Health and Family Welfare, Government of India) approved on which there are signatures of the above, which I am confirming".*

22. More importantly, when submissions were made before this Court prior to the pronouncement of the common Judgement dated 29.07.2019, the CBI had not disputed the existence of the videography and had submitted that the videography had not been made part of the chargesheet. However, in the Affidavit (i.e. Compliance Report) dated 19.10.2020 filed by the CBI before the learned Trial Court, it was revealed that no such CD/cassette/videography had either been seized by the CBI or was in the custody of either the MCI or the MoHFW. The relevant portions delineating the same can be found hereinunder:

"8. That, in compliance of the direction of this Ld. Court and Hon'ble High Court of Delhi, availability of the CD containing videography, was enquired from CBI, ACB, Lucknow. It has been conveyed by SP, CBI, ACB, Lucknow vide letter dated 23 .09.201 9 that all

the documents related to this case which have been shown in connection of this RC 14(A)/2010, CBI, Lucknow having SL No. 1 to 37 have been transferred to CBI, AC.1, New Delhi and no other documents/CD are available in Lucknow branch Malkhana (Copy of letter with enclosures dated 23.09.2019 is enclosed).

9. That no such CD was seized during investigation in this case. IO of the case Shri Surendra Rai, Inspector (Now Retired) has also informed that the said article i.e. CD/Cassette/videography has not been seized by him during the course of investigation.

10. That further, the said article i.e. CD/Cassette/videography of the college i.e. Rohilkhand Medical Collage and Hospital, Bareilly have also not been found in the record of CBI, AC- 1 Branch as well as Malkhana of CBI, ACB, Lucknow. Thus, indicating that no such CD/Cassette/videography was seized by CBI.

11. That, as per direction of Ld Trial Court, CBI vide letter dated 18.09.2020 asked Deputy Secretary to Government of India, Ministry of Health and Family Welfare, (Department of the Health and Family Welfare), Nirman Bhawan, New Delhi regarding the existence of CD/ Cassette of videography of inspection dated 20.10.2008 in respect of Rohilkhand Medical College and Hospital, Bareilly. In reply, Ministry of Health and Family Welfare, vide letter No. U.12012/49/2020-ME-I (FTS-8078041) dated 28.09.2020, has informed that after intense search, the file F.No.U.12012/23 1/2005-ME(P.II) has been found out. However, it has been seen that no CD/Cassette of videography is available in the file /record (Copy of letter of MoHFW dated 28.09.2020 is enclosed).

12. That , as per direction of Ld Trial Court, CBI vide

letter dated 28.01.2020 asked the MCI to state the existence of CD/Cassette of videography of inspection dated 20.10.2008, if any in respect of Rohilkhand Medical College and Hospital, Bareilly. In its response, MCI vide letter no. MCI-34(41) (Gen)/2019-Med/187380 dated 07.02.2020, informed that they had not conducted any inspection of said college on 20.10.2008 (Copy of letter dated 07.02.2020 of MCI is enclosed).”

23. However, it was noted in the Affidavit dated 19.10.2020 that the only inspection that had been conducted on 20.10.2008 was by a team of three members, namely Dr. Anurag Srivastava, Dr. Rajendra Singh and Dr. Arvindan Nair, that had been constituted by the MoHFW. On enquiry, Dr. Anurag Srivastava *vide* letter dated 11.09.2020 informed the CBI that the team had prepared a video recording of the inspection visit. However, no further clarification was provided by Dr. Srivastava. The Affidavit states that no response was received from Dr. Singh and Dr. Nair as well. The relevant portion of the Affidavit delineating this information can be read below:

“13. That, as per direction of Ld. Trial Court, the documents which were filed alongwith Chargesheet were scrutinized. In these documents an inspection report dated 20.10.2008 in respect of Rohilkhand Medical Collage and Hospital, Bareilly was found. The said inspection was conducted by team of three members namely Dr. Anurag Srivastava, HOD, Surgical AIIMS, New Delhi, Dr. Rajendra Singh, Professor HOD, Surgical PGI, Chandigarh, and Dr Arvindan Nair, Professor, Deptt of Surgery, CMC, Vellore (TN), constituted by Ministry of Health and Family Welfare, Government of India. The team submitted the said report to Ministry of Health and Family Welfare, Government of India.

14. *That, as per direction of Ld Trial Court, a letter dated 02.09.2020 issued by SP, CBI, AC.I, enquiring from Dr. Anurag Srivastava, HOD, Surgical AIIMS, New Delhi, (the then team member of above-said inspection dated 20.10.2008) regarding the CD/Videography of Rohilkhand Medical College and Hospital, Bareilly. Dr. Anurag Srivastava vide letter dated 11.09.2020 has informed that the team prepared a video recording of the inspection visit. Further, undersigned had also issued letter dated 11.09.2020. However, further clarification in this regard is awaited from Dr. Anurag Srivastava (Copy of letter dated 02.09.2020, 01.10.2020 are enclosed for kind perusal).*

15. *That, further vide letter dated 29.09.2020, it was enquired from Dr. Rajendra Singh, the then Professor and HOD, Surgical PGI, Chandigarh, and Dr Arvindan Nair the then Professor, Deptt of Surgery, CMC, Vellore (TN) (Team Member), whether the said inspection was Videographed or not. Till date no response has been received from them.”*

(emphasis supplied)

24. The aforementioned material that has been scrutinised carefully by this Court gives impetus to the suspicion that the videography in question has either been misplaced or it has been deliberately inoculated from scrutiny. In both the cases it is investigating agency that has to take the blame. The contradictions in various statements regarding the existence of the videography and the custody of the same is highly irregular. The statement made by the Section Officer and the affidavit indicates that videography was conducted. Even if the video is missing, the notes which should have been taken at the time when the videography was conducted would be present, but the notes have also not been taken into custody by the

CBI. This Court is of the view that there is a probability of foul play in the case.

25. In light of this, this Court deems it proper to direct for the constitution of a High-Level Committee by the CBI to conduct a probe into the existence of the videography of the inspection that took place on 20.10.2008. The probe be conducted within a period of six weeks. The report of the probe be placed on record before the next date of hearing.

26. With these observations the petition is disposed of along with the pending application.

27. List on 18.02.2022 for compliance.

SUBRAMONIUM PRASAD, J.

JANUARY 03, 2022

Rahul

नात्यमेव जयते