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ROLE OF CENTRAL BUREAU OF INVESTIGATION IN PRESENT SCENARIO: AN ANALYSIS

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ABSTRACT :

Someone said rightly that where there is necessity, there is invention. Same thing applies on this central agency i.e., central bureau of investigation. Because of prominent act of corruption in society/public sector, this agency was established. It will not be wrong to say that this agency maintains the constitutional values in the society. When there is one sector in the society which is enriching itself by illegal means and other sector is suffering from the same then there is violation of principle of rule of law which is cardinal principle of our constitution. This principle also falls under basic structure of the constitution. Hence, this agency maintains rule of law in the society/ all sectors.



KEY WORDS: Corruption, Delhi special police establishment, Prevention of Corruption Act.

1.1 INTRODUCTION:

The Central Bureau of Investigation (CBI), functioning under Dept. of Personnel, Ministry of Personnel, Pension & Public Grievances, Government of India, is the premier investigating police agency in India. It is an elite force playing a major role in preservation of values in public life and in ensuring the health of the national economy. It is also the nodal police agency in India, which coordinates investigation on behalf of Interpol Member countries.

At a beginning phase of The Second Great War, the Public authority of India understood that huge expansion in use for war endeavors had given open doors to deceitful and against social people, the two authorities and non-authorities, for enjoying pay off and debasement at the expense of public and the Public authority. It was felt that Police and other Policing under the State Legislatures were not in that frame of mind to adapt to the circumstance. A chief request was, thusly, passed by the Public authority of India in 1941, setting up the Unique Police Foundation (SPE) under a Dive in the then Division of Battle with command to examine instances of pay off and defilement in exchanges with which War and Supply Branch of the Public authority of India was concerned. Toward the finish of 1942, the exercises of the SPE were stretched out to remember instances of debasement for Railroads additionally, probably in light of the fact that the Rail lines were essentially worried about development and supply of war materials.

In 1943, an Ordinance was issued by the Government of India, by which a Special Police Force was constituted and vested with powers for the investigation of certain offences committed in connection with the departments of the Central Government committed anywhere in British India. As a need for a Central Government Agency to investigate cases of bribery and corruption was felt even after the end of the war, the Ordinance issued in 1943, which had lapsed on 30th September, 1946 was

replaced by Delhi Special Police Establishment Ordinance of 1946. Subsequently, the same year Delhi Special Police Establishment Act, 1946 was brought into existence.

CBI gets ability to explore from the Delhi Exceptional Police Foundation Act, 1946, Area 2 of the Demonstration vests DSPE with purview to just examine offenses in the Association Regions. In any case, the ward can be reached out by the Focal Government to different regions including Rail route regions and States under Area 5(1) of the Demonstration, gave the State Government concurs assent under Segment 6 of the Demonstration. The chiefs of CBI of the position of Sub Examiner or more, practice all powers of a station office responsible for the police headquarters for the concerned region with the end goal of examination. According to Segment 3 of the Demonstration, Exceptional Police Foundation is approved to examine just those cases, which are informed by the Focal Government occasionally.

After declaration of the Demonstration, administration of SPE was moved to the Home Division and its capabilities were amplified to cover all branches of the Public authority of India. The purview of SPE was stretched out to every one of the Association regions and the Demonstration accommodated its expansion to States with the assent of the State Government. The Base camp of SPE was moved to Delhi and the association was put under the charge of Chief, Knowledge Agency. In any case, in 1948, a post of Reviewer General of Police, SPE was made and the association was put under his charge.

In 1953, an Implementation Wing was added to the SPE to manage offenses under the Import and Commodity Control Act. With the progression of time, an ever increasing number of cases under regulations other than Avoidance of Defilement Act and infringement of Import and Product Control Act additionally came to be shared with the SPE. As a matter of fact, by 1963 SPE was approved to examine offenses under 91 unique segments of Indian Punitive Code and 16 other Focal Demonstrations other than offenses under the Counteraction of Debasement Act 1947.

A developing need was felt for a Focal Police Organization at removal of the Focal Government which could explore instances of pay off and debasement, yet in addition infringement of Focal financial regulations, significant cheats connecting with Legislature of India divisions, public business entities, visa fakes, wrongdoings on the high oceans, violations on the Carriers and serious wrongdoings perpetrated by coordinated groups and expert crooks. Hence, the Public authority of India set up Focal Department of Examination by a goal dated first April, 1963¹.

1.2 OBJECT:

- (i) Combating corruption in public life, curb economic and violent crimes through meticulous investigation and prosecution.
- (ii) Evolve effective systems and procedures for successful investigation and prosecution of cases in various law courts.
- (iii) Help fight cyber and high technology crime.
- (iv) Create a healthy work environment that encourages team-building, free communication and mutual trust
- (v) Support state police organizations and law enforcement agencies in national and international cooperation particularly relating to enquiries and investigation of cases.
- (vi) Play a lead role in the war against national and transnational organized crime.
- (vii) Uphold Human Rights, protect the environment, arts, antiques and heritage of our civilization.
- (viii) Develop a scientific temper, humanism and the spirit of inquiry and reform.
- (ix) Strive for excellence and professionalism in all spheres of functioning so that the organization rises to high levels of endeavour and achievement².

¹ cbi.gov.in (official website of central bureau investigation).

² Supra.

1.3 FUNCTIONS OF AGENCY:

Over the years, CBI has emerged as the premier investigating and anti-corruption agency in the country. It has mainly been entrusted with the following functions

- a) Enquiry and Investigation of cases;
- b) Prosecution of CBI investigated cases;
- c) Preventive Vigilance functions;
- d) National Central Bureau- India connected with International Criminal Police Organization Coordination, Training and Research.

1.4 Enquiry and Investigation of Cases:

The legal powers of investigation of CBI are derived from Sec. 3 of the DSPE Act, 1946. This Act confers on the members of the Delhi Special Police Establishment (CBI) concurrent and co-extensive powers, duties, privileges and liabilities with Police Officers of the Union Territories in relation to the investigation of offences notified by the Central Government under Section 3 of the Act and arrest of persons concerned in such offences. While exercising such powers, members of the CBI of or above the rank of Sub-Inspector shall be deemed to be officers-in-charge of Police Stations of the respective jurisdictions.

The CBI can investigate only offences or classes of offences as are notified by the Central Government under section 3 of the DSPE Act, 1946. A list of such offences notified by the Central Government under section 3 is circulated periodically by the Directorate of Prosecution.

According to section 2 of the Act³, CBI can suo-motu take up investigation of offences notified under section 3 only in the Union Territories. For taking up investigation within the jurisdiction of a State, prior consent of the concerned State is required under section 6 of DSPE Act, 1946. The State Government may either accord a general consent for a class of cases or a specific consent for a particular case. In such cases, the Central Government is also required to issue notification under section 5 of the DSPE Act, 1946 for the purpose of extension of the power and jurisdiction of DSPE to the State concerned.⁴

As per Section 7 of the Act⁵, action can be taken against public servant who accepts or attempt to accept, an undue advantage to perform public duty improperly.

Issue came before Supreme Court in State of Gujarat vs. Mansukhbhai Kanjibhai Shah⁶ that whether 'Deemed University' is covered under the Prevention of Corruption Act, 1988. Other issue came before Supreme Court whether 'Trustee' can be termed as 'Public Servants' under section 2(c)(xi) of the PC Act. It was observed that any person, who is a Vice Chancellor, any member of any governing body, professor, reader, lecturer, any other teacher or employee, by whatever designation called, of any University, is said to be a public servant. Further, the definition inter alia, covers any person whose services have been availed of by a university, or any other public authority in connection with holding or conducting examinations.

Rejecting the contention of the respondent that the term "University" needs to be read in accordance with the UGC Act, wherein only those Universities which are covered under the S. 2(f) of the UGC Act are covered under the PC Act. Such an interpretation, by importing the technical definition under a different Act may not be feasible herein. It is a settled law that technical definitions under one statute should not be imported to another statute which is not in pari materia with the first. It has been held that the UGC Act and the PC Act are enactments which are completely distinct in their purpose, operation and object. The preamble of the UGC Act states that it is 'an Act to make provision for the coordination and determination of standards in Universities, and for that purpose, to establish a

³ Delhi Special Police Establishment Act, 1946.

⁴ Paramjeet Kaur on Lectures on Prevention of Corruption Act, Singla Law Agency.

⁵ The Prevention of Corruption Act, 1988.

⁶ The Prevention of Corruption Act, 1988.

University Grants Commission'. On the other hand, the PC Act is an enactment meant to curb the social evil of corruption in the country. As such, the extension of technical definitions used under one Act to the other might not be appropriate, as the two Acts are not in pari materia with one another.

On a perusal of S. 2(c) of the PC Act, it was observed that the emphasis is not on the position held by an individual; rather, it is on the public duty performed by him/her. In this regard, the legislative intention was to not provide an exhaustive list of authorities which are covered, rather a general definition of 'public servant' has been provided thereunder.

The object of the PC Act was not only to prevent the social evil of bribery and corruption, but also to make the same applicable to individuals who might conventionally not be considered public servants. The purpose under the PC Act was to shift focus from those who are traditionally called public officials, to those individuals who perform public duties.

Therefore, for all the above reasons, it was opined that the High Court was incorrect in holding that a "Deemed University" is excluded from the ambit of the term "University" u/s 2(c)(xi) of the PC Act. Thus, it was held that "Deemed University" is covered within the ambit of PC Act, 1988.

As regards the second question that whether the trustee in the Board of 'Deemed to be University' is a 'public servant' covered u/s 2(c) of the PC Act, the Apex Court after placing reliance on CBI vs. Ramesh Gelli Case⁷, held that he is a public servant. It was found on the material on record that the respondent (accused trustee) was the final authority with regard to the grant of admission, collection of fees and donation amount.

The charge sheet specifically disclosed that the respondent allegedly was collecting certain extra amount over the prescribed fees on the pretext of allowing the students to fill up their examination forms. Therefore, paying the respondent the alleged amount was a condition precedent before filling up the forms, to appear for the examinations. In the complaint, it was alleged that the respondent had demanded an amount of Rupees Twenty Lakhs to be paid to the co-accused, failing which the daughter of the complainant would not have been permitted to appear in the examination⁸.

1.5 ENTRUSTMENT OF MATTERS BY CONSTITUTIONAL COURTS:

The Hon'ble Supreme Court of India and the Hon'ble High Courts also entrust matters for Investigation or Enquiry to CBI. These may either be new cases or cases which are already registered by the State Police or other investigating agencies.

In *State of West Bengal & Ors. v. Committee for Protection of Democratic Rights & Ors*⁹, the question involved is, whether a High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can direct the Central Bureau of Investigation (CBI) established under the Delhi Special Police Establishment Act, 1946, to investigate cognizable offence which is alleged to have taken place within the territorial jurisdiction of a State without the consent of the State Government? The question assumed significance on account of the involvement of two basic features of the Constitution, namely, the federal structure and the power of judicial review. Entry 80 in List I of Schedule VII to the Constitution of India reads: "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".

The crucial words in this Entry are "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". Entry 80 in the Union List corresponds to Entry 39 of List I of Federal Legislative List in the VII Schedule to the Government of India Act, 1935. The wording is identical, except that the Entry referred to "British India", "Governor's Province" and "Chief

⁷ 2016 (3) SCC 788.

⁸ *Paramjeet Kaur on Lectures on Prevention of Corruption Act*, Singla Law Agency.

⁹ (2010) 3 SCC 571.

Commissioner's Province", while Entry 80 in the Constitution refers to "State" and "Government of the State".

The requirement of consent of the State Government for entrusting investigation of a cognizable offence in the State by the CBI or any other external agency was intended to safeguard the federal structure of the Constitution which is also a basic feature. The question whether Article 142 empowers the Supreme Court to pass an order contrary to a substantive provision of a Statute was answered in the negative by successive Constitution Benches.¹⁰ The view taken was that however wide and plenary language of Article 142 maybe, the direction given by the Court should not be inconsistent with or repugnant to or in violation of a substantive provision of any statute.

In *Subramanian Swamy and other vs. Director, Central Bureau of Investigation and others*¹⁰, the constitutional validity of S. 6A of the Delhi Special Police Establishment Act, 1946 was challenged. The Apex Court struck down the provision holding it to be ultra vires to the constitution. It transgressed the principles enshrined in article 14 of the constitution.

The present section is a reincarnation of the above provision with uniform and universal application with a view to take out the sting of unconstitutionality from the provision. The protection now has been extended to all the categories of public servants, whether employed in the affairs of a state or the centre, where the offence relates to the recommendations made or decision taken in discharge of official functions or duties.¹¹

However, the subordinate courts are not competent to direct CBI under section 156(3) of the CrPC to conduct investigation. This is held by Hon'ble Supreme Court in *CBI v. State of Rajasthan*.

The Supreme Court has held that what is contained in sub-section (3) of Section 156 of the Cr.P.C., is the power of a Magistrate to order an "officer in charge of a police station" to conduct an investigation referred to in sub-section (1) thereof, because the words "order such an investigation as abovementioned" in sub-section (3) are unmistakably clear as referring to the other sub-section.

The Supreme Court further held that two expressions "police station" and "officer in charge of a police station" have been given separate definitions in the Code in Sections 2(o) and 2(s) respectively. A place or post declared by the Government as police station, must have a police officer in charge of it and if he, for any reason, is absent in the station house, the officer who is in the next junior rank present in the police station, shall perform the function as officer in charge of that police station. The primary responsibility for conducting investigation into offences in cognizable cases vests with such police officer.

The Supreme Court further held that Section 156(3) of the Criminal Procedure Code empowers a Magistrate to direct such officer in charge of the police station to investigate any cognizable case over which such Magistrate has jurisdiction. It was held that the magisterial power cannot be stretched under Section 156(3) beyond directing the officer in charge of a police station to conduct the investigation.

The Supreme Court, thus, held that a Magistrate cannot direct CBI to conduct investigation in exercise of his powers under Section 156(3) of the Criminal Procedure Code.¹²

Same principle reiterated by Hon'ble Supreme Court in the case of *CBI v. State of Gujarat*¹³. The Supreme Court stated that magisterial power cannot be stretched under Section 156(3) of the Cr.PC. beyond directing the officer in charge of a police station to conduct the investigation and no such direction can be given to CBI.

¹⁰ AIR 2014 SC 2140.

¹¹ *Paramjeet Kaur on Lectures on Prevention of Corruption Act*, Singla Law Agency.

¹² AIR 2001 SC 668.

¹³ (2007) 6 SCC 156.

1.6 Matters entrusted by the Lokpal or the Central Vigilance Commission:

Section 20 of the Act¹⁴, provides that the Lokpal on receipt of a complaint, alleging commission of an offence punishable under Prevention of Corruption Act, 1988 by a Public Servant, may order: -

- a) preliminary inquiry against any public servant by the DSPE to ascertain whether there exists a prima facie case for proceeding in the matter; or
- b) investigation by DSPE when there exists a prima facie case.

The Central Vigilance Commission may cause an enquiry or investigation to be made by the CBI, on a reference made by the Central Government or into any complaint against officials falling under its jurisdiction, alleging commission of offence under the PC Act, 1988 and an offence with which a public servant may under CrPC, 1973, be charged at the same trial.

CONCLUSION:

From the date of establishment till today, this agency is performing its function in impartial manner. That is the reason all sensitive cases are being transfer to this agency time to time whenever need arises. It will not be wrong to say that central bureau of investigation is acting as a nodal agency among all government and private organisation. Its function is deterrent in nature which reminds all officials that do not indulged in such activity which is prohibited by corruption laws. It is requirement of public interest that such agencies must be establish in the society to protect the interest of people.

¹⁴ Lokpal and Lokayuktas Act, 2013.