

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION****ORIGINAL SUIT NO. 4 OF 2021**

**THE STATE OF WEST BENGAL** **...PLAINTIFF(S)**  
**VERSUS**  
**UNION OF INDIA** **...DEFENDANT(S)**

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## **J U D G M E N T**

**B.R. GAVAI, J.**

### **I. INTRODUCTION:**

1. The present suit has been filed by the State of West Bengal against Union of India seeking the following reliefs:

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

FIR and any proceeding arising therefrom, registered after November 16, 2018 when the consent under Section 6 of the DSPE Act was withdrawn by the Plaintiff, other than investigation with respect to an FIR filed/registered on an order of a competent court of law;

- vi. Pass a Judgment and Decree granting such other and further reliefs that are deemed fit in the facts and circumstances of the case.”

**2.** On filing of the suit, preliminary objections have been raised by the defendant – Union of India with regard to the maintainability of the present suit. Through this judgment, we have dealt with the contentions of the parties on the aspect of maintainability.

**3.** For the consideration of the present issue of maintainability, we have heard Shri Tushar Mehta, learned Solicitor General of India appearing on behalf of the defendant-Union of India and Shri Kapil Sibal, Shri Abhishek Manu Singhvi and Shri Bishwajit Bhattacharya, learned Senior Counsel appearing on behalf of the plaintiff-State of West Bengal.

## **II. SUBMISSIONS OF DEFENDANT:**

**4.** The basic objection with regard to tenability of the suit is based on Article 131 of the Constitution of India (for short,

“the Constitution”). The learned Solicitor General submitted that, upon interpretation of Article 131 of the Constitution, it is clear that the provisions of Article 131 of the Constitution are subject to the other provisions of the Constitution. He therefore submitted that, since the issue involved in the present *lis* is also an issue arising in certain appeals pending before this Court, under Article 136 of the Constitution, a fresh suit under Article 131 of the Constitution would not be tenable. It is submitted that the term “subject to the provisions of this Constitution” has to be interpreted as “subject to the other provisions of the Constitution including Article 136”. It is therefore submitted that, since the issue with regards to the same subject matter is pending before this Court under Article 136 of the Constitution, a suit for the same purpose under Article 131 of the Constitution is barred.

**5.** The learned Solicitor General further submitted that, in various proceedings filed either under Article 226 before the High Court or under Article 136 of the Constitution wherein the State of West Bengal is a party, the question with regards to the jurisdiction of the Central Bureau of Investigation (for

short “CBI”) to investigate cases within the State of West Bengal after 16<sup>th</sup> November 2018, i.e., the date on which the consent under Section 6 of the Delhi Special Police Establishment Act, 1946 (hereinafter referred to as “DSPE Act”) was withdrawn arises for consideration.

**6.** While making a reference to the term “subject to the provisions of this Constitution” in Article 131 of the Constitution, the learned Solicitor General submitted that, since the subject matter of the present suit is also pending before this Court or the High Courts under Article 136 or 226 of the Constitution respectively, the present suit would not be tenable.

**7.** The learned Solicitor General further submitted that, perusal of the entire matter would reveal that, taking the averments in the plaint at its face value, it can be seen that no cause of action has been made out against the defendant to the suit i.e. the Union of India. Shri Mehta submitted that all the reliefs including declaration of the registration of cases being unconstitutional, restraining and forbearing the defendant from registering any case etc., are all related to the CBI. It is submitted that the cases referred to in the plaint

are registered at the instance of the CBI and the Union of India has no role to play. It is submitted that, though the reliefs are claimed against the CBI, it has not been made a party to the suit and that this has been rightly done inasmuch as if the CBI was made a party, the suit would not have been maintainable under Article 131 of the Constitution. It is submitted that, since the defendant has no role to play in the registration of cases; even if the suit is decreed, the said decree would remain unenforceable against the present defendant. Reliance in this respect is placed on the judgments of this Court in the cases of ***Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and Others***<sup>1</sup> and ***Ram Kumar v. State of Uttar Pradesh and Others***<sup>2</sup>. It is therefore submitted that the present suit is liable to be dismissed on the ground of misjoinder or non-joinder of parties.

**8.** The learned Solicitor General further submitted that the present suit is also liable to be dismissed on the ground of non-laying down of the factual foundation in the suit. It is

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<sup>1</sup> (2010) 7 SCC 417 : 2010 INSC 362

<sup>2</sup> 2022 SCC OnLine SC 1312 : 2022 INSC 1032

submitted that, unless there is a factual basis in the suit itself, no legal arguments arising therefrom can be entertained. Reliance in this respect is placed on the judgment of this Court in the case of ***D.M. Deshpande and Others v. Janardhan Kashinath Kadam (Dead) By LRs and Others***<sup>3</sup> and the judgment of the Privy Council in the case of ***Attorney-General of the Colony of Fiji v. J.P. Bayly Limited***<sup>4</sup>.

9. Shri Mehta further submitted that, Article 131 of the Constitution clearly provides as to who can be parties to the suit under Article 131 of the Constitution. He submitted that, even for a moment, if it is assumed that CBI is an instrumentality of the State under Article 12 of the Constitution, still the suit would not be maintainable. It is submitted that the expanded meaning given to the term 'State' under Article 12 of the Constitution cannot be made applicable to the term 'Union' or 'State' mentioned under Article 131 of the Constitution. Reliance in this respect is placed on the Constitution Bench judgments of this Court in the cases of ***State of Bihar v. Union of India and***

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<sup>3</sup> (1998) 8 SCC 315 : 1998 INSC 425

<sup>4</sup> 1949 SCC OnLine PC 76

***Another*<sup>5</sup>, *State of Rajasthan and Others v. Union of India and Others*<sup>6</sup> and *Tashi Delek Gaming Solutions Limited and Another v. State of Karnataka and Others*<sup>7</sup>.**

10. The learned Solicitor General further submitted that the dispute, at the most, is between the State of West Bengal and the CBI. Reliance in this respect is placed on the judgment of this Court in the case of ***National Textile Corporation Limited v. Nareshkumar Badrikumar Jagad and Others*<sup>8</sup>.**

11. Relying on the judgment of this Court in the case of ***Vineet Narain and Others v. Union of India and Another*<sup>9</sup>**, the learned Solicitor General further submitted that the responsibility of superintendence over the CBI's functioning has been entrusted with the Central Vigilance Commission (for short "CVC"). It is submitted that CVC is an independent body appointed by an independent collegium. It is submitted that this Court has clearly emphasized that the CBI has to be viewed as a non-partisan agency. It is submitted that no control is vested with the Central

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<sup>5</sup> (1970) 1 SCC 67 : 1969 INSC 253

<sup>6</sup> (1977) 3 SCC 592 : 1977 INSC 143

<sup>7</sup> (2006) 1 SCC 442 : 2005 INSC 607

<sup>8</sup> (2011) 12 SCC 695 : 2011 INSC 651

<sup>9</sup> (1998) 1 SCC 226 : 1997 INSC 826



Government insofar as CBI is concerned. The learned Solicitor General submitted that Section 8 of the Central Vigilance Commission Act, 2003 (hereinafter referred to as “CVC Act”) would make it clear that the CBI is under superintendence of the CVC and not the Union of India. He submitted that the proviso to Section 8(1)(b) of the CVC Act makes it clear that even the CVC is not empowered to exercise powers in such a manner so as to require the Delhi Special Police Establishment (for short, “DSPE”) to investigate or dispose of any case in a particular manner. It is submitted that this Court, in the case of ***Centre for Public Interest Litigation and Others v. Union of India and Others***<sup>10</sup> held that the power of superintendence can neither be used by the CVC for interfering with the manner and method of investigation by the CBI nor can the CBI be directed to exercise its powers in a particular manner.

**12.** The learned Solicitor General further submitted that Section 4 of the DSPE Act would also clearly reveal that the administration of the CBI is with the CVC and not the Union of India.

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<sup>10</sup> (2012) 3 SCC 104 : 2012 INSC 68

**13.** Shri Mehta further submitted that the plaintiff has suppressed the material fact that most of the cases stated in the plaint have been registered on the directions of the High Court issued under Article 226 of the Constitution. He submitted that, under Order XXVI Rule 9 of the Supreme Court Rules, 2013 (hereinafter referred to as “SC Rules”), the plaintiff, when he sues upon a document in his possession, is required to deliver such document or a copy thereof with the plaint and under Order XXVI Rule 10 of the SC Rules, the plaintiff, when he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, is required to enter such documents in a list to be added or annexed to the plaint. It is submitted that, admittedly, the requirements under Order XXVI Rules 9 and 10 of SC Rules have not been fulfilled in the present plaint. Relying on the judgment of this Court in the case of **S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. and Others**<sup>11</sup>, it is submitted that when a party withholds a vital document in order to gain advantage on the other side, then such a party would be guilty of playing fraud

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<sup>11</sup> (1994) 1 SCC 1 : 1993 INSC 344

on the court as well as on the opposite party. He therefore submitted that, on this short ground alone, the suit is liable to be dismissed. In addition to **S.P. Chengalvaraya Naidu (Dead) by LRs.** (supra), reliance is placed on the judgments of this Court in the cases of **Atma Linga Reddy and Others v. Union of India and Others**<sup>12</sup> and **Kazi Lhendup Dorji v. Central Bureau of Investigation and Others**<sup>13</sup>. It is therefore submitted that, in view of Order XXVI Rule 6 of the SC Rules, the plaint is liable to be rejected.

**14.** In response to the contention of the plaintiff regarding the defendant not filing an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) is concerned, it is submitted that the defendant has taken preliminary objections with regard to the maintainability of the suit itself and therefore there is no substance with regard to the said submission of the plaintiff.

### **III. SUBMISSIONS OF PLAINTIFF:**

**15.** Shri Sibal, on the contrary submitted that, for considering the question as to whether the suit is maintainable or not, only the averments made in the plaint

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<sup>12</sup> (2008) 7 SCC 788 : 2008 INSC 805

<sup>13</sup> 1994 Supp (2) SCC 116 : 1994 INSC 129

will have to be taken into consideration. It is submitted that, only the averments made in the plaint can be considered to decide as to whether the plaint discloses any cause of action or not. It is submitted that, perusal of the averments made in the plaint would clearly reveal that a cause of action has been made out against the defendant – Union of India. It is submitted that, perusal of Section 2 of the DSPE Act would reveal that it is the Central Government that is empowered to constitute a special police force to be called the DSPE for the investigation of offences notified under Section 3 of the DSPE Act. It is submitted that, perusal of Section 3 of the DSPE Act would also reveal that it is the Central Government that is empowered to specify the offences or classes of offences which are to be investigated by the DSPE. He submitted that, perusal of sub-section (1) of Section 4 of the DSPE Act would reveal that the superintendence of the DSPE vests with the CVC only for the investigation of offences committed under the Prevention of Corruption Act, 1988 (hereinafter referred to as “PC Act”). He submitted that sub-section (2) of Section 4 clearly reveals that, except what has been provided in sub-section (1) thereof, the superintendence of DSPE in all

other matters shall vest with the Central Government. He submitted that sub-section (3) of Section 4 would reveal that the administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government and that such an officer, in respect of the CBI, is entitled to exercise powers exercisable by an Inspector-General of Police in respect of the police force in a State.

**16.** Shri Sibal further submitted that sub-section (1) of Section 5 of the DSPE Act would reveal that it is only the Central Government that is empowered to extend to any area (including Railway areas) in a State, the powers and jurisdiction of members of the CBI for the investigation of any offences or classes of offences specified in a notification under Section 3 of the DSPE Act. He submitted that under sub-section (2) of Section 5, a member of the CBI may, when by an order under sub-section (1) thereof, the powers and jurisdiction of the CBI are extended to any such area, discharge the functions of a police officer in that area. However, this is again subject to any orders which the Central Government may make in this behalf. It is submitted that, perusal of sub-section (3) thereof would reveal that any

member of CBI of or above the rank of Sub-Inspector is entitled to exercise the powers of the officer in charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station. This is again subject to the orders which the Central Government may make in that behalf. It is therefore submitted that the provisions of the DSPE Act would reveal that CBI cannot be said to be an instrumentality of a State by giving an expanded meaning to the term 'State' in Article 12 of the Constitution but is one of the organs of the Union of India through which it derives powers to investigate offences.

**17.** It is further submitted that the power available with the Central Government for extension of the jurisdiction of CBI to other areas is subject to the consent of such State Government under Section 6 of the DSPE Act. It is therefore submitted that if consent is given by a State and subsequently withdrawn, then the CBI will not have jurisdiction to exercise the powers in that State.

**18.** Shri Sibal submitted that grant of consent under Section 6 of the DSPE Act is a privilege. It is the discretion of the State as to whether such a privilege is to be granted or not. He submitted that the cause of action in the present suit is that, after withdrawal of the consent which was granted under Section 6 of the DSPE Act by the plaintiff, the Central Government has no jurisdiction to authorize investigating agency (CBI) to register cases in the State of West Bengal.

**19.** Shri Sibal further submitted that the interpretation sought to be given by the defendant to the words “subject to the provisions of this Constitution” as appearing in Article 131 of the Constitution is incorrect. It is submitted that the correct interpretation would be that when there is some other provision in the Constitution prohibiting this Court from exercising its jurisdiction, then a suit under Article 131 of the Constitution would not be tenable. He refers to Articles 262 and 279A(11) of the Constitution in this regard. He submits that the words “subject to the provisions of this Constitution” would not make the present suit non-maintainable.

**20.** Dealing with the arguments of the learned Solicitor General on Order XXVI Rule 6 of the SC Rules, Shri Sibal submitted that the plaint can be rejected only when it either does not disclose a cause of action or where the suit appears from the statement in the plaint to be barred by any law. It is submitted that neither of the grounds is available in the present case. Insofar as the argument with regard to Order XXVI Rules 9 and 10 of the SC Rules are concerned, Shri Sibal submitted that there is sufficient compliance with regard to the said provisions.

**21.** With regard to the allegations regarding suppression, Shri Sibal submitted that, out of so many instances listed in the plaint, only one or two cases are registered under the directions of the High Court. It is therefore submitted that there is no material suppression as alleged. Shri Sibal therefore pressed for rejection of the preliminary objections raised by the learned Solicitor General.

#### **IV. LEGAL FRAMEWORK:**

##### ***a. Supreme Court Rules, 2013***

**22.** For appreciating the rival submissions, it will be relevant to refer to Order XXVI Rule 6 of the SC Rules, which



reads thus:

**“Order XXVI**

**Plaints**

.....

**6.** The plaint shall be rejected:-

(a) where it does not disclose a cause of action;

(b) where the suit appears from the statement in the plaint to be barred by any law.”

**23.** It can thus be seen that a plaint is liable to be rejected where it does not disclose a cause of action or where the suit appears from the statement in the plaint to be barred by any law.

**24.** As such, it could be seen that the provisions in Order XXVI Rule 6 (a) and (b) are analogous to the provisions in clauses (a) and (d) of Order VII Rule 11 of the CPC.

**25.** It is a settled position of law that, for considering objections under Order VII Rule 11 (a) and (d) of the CPC, what needs to be looked into is only the averments made in the plaint. It is well settled that if the averments made in the plaint are germane then the pleas taken by the defendant in the written statement would be wholly irrelevant at this stage. Reference in this respect could be made to the

judgments of this Court in the cases of **Saleem Bhai and Others v. State of Maharashtra and Others**<sup>14</sup>, **Sopan Sukhdeo Sable and Others v. Assistant Charity Commissioner and Others**<sup>15</sup>, **Bhau Ram v. Janak Singh and Others**<sup>16</sup> and **Chhotanben and Another v. Kirtibhai Jalkrushnabhai Thakkar and Others**<sup>17</sup>.

**26.** In view of the word 'shall' used in the provisions, a duty is cast on the court to examine as to whether the plaint is hit by any of the infirmities provided in the six clauses of Order VII Rule 11 of the CPC. A duty is cast on the court to reject the plaint even without the intervention of the defendant. Reference in this respect could be made to the judgment of this Court in the case of **Sopan Sukhdeo Sable** (supra).

**27.** It is further settled that the averments made in the plaint have to be read as a whole and not in isolation. Reference in this respect could be made to the judgment of this Court in the case of **Kirtibhai Jalkrushnabhai Thakkar** (supra).

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<sup>14</sup> (2003) 1 SCC 557 : 2002 INSC 554

<sup>15</sup> (2004) 3 SCC 137 : 2004 INSC 56

<sup>16</sup> (2012) 8 SCC 701 : 2012 INSC 293

<sup>17</sup> (2018) 6 SCC 422 : 2018 INSC 319

**28.** As already discussed hereinabove, the provisions under Order XXVI Rule 6 of the SC Rules are analogous to Order VII Rule 11 (a) and (d) of the CPC. We will have to therefore consider the preliminary objections as raised by the defendant in the light of the aforesaid legal provisions.

**29.** As already observed hereinabove, the word 'shall' casts a duty upon the court to consider as to whether the plaint is hit by any of the infirmities mentioned in the provision even without the intervention of the defendant. As such, we do not find any force in the submission of the plaintiff that the objections could not be considered in the absence of an application for the rejection of plaint filed by the defendant under Order XXVI Rule 6 of the SC Rules.

***b. Article 131 of the Constitution:***

**30.** It will be apposite to refer to Article 131 of the Constitution, which reads thus:

**“131. Original jurisdiction of the Supreme Court.-** Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute-

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States,

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.”

**31.** It is thus clear that the jurisdiction of this Court, subject to the provisions of the Constitution, is to the exclusion of any other court. The jurisdiction has to be exercised for any dispute either between the Government of India and one or more States; or between the Government of India and any State or States on one side and one or more other States on the other; or between two or more States. The jurisdiction is also limited insofar as the dispute involves any question (whether of law or fact) on which the existence or extent of legal right depends.

## **V. JUDICIAL PRECEDENTS:**

### ***a. State of Bihar v. Union of India:***

**32.** The learned Solicitor General relied on the Constitution Bench judgment of this Court in the case of ***State of Bihar v. Union of India and Another*** (supra). In the said case, the State of Bihar had filed 9 suits against the Union of India who was the first defendant in all of the said suits. Whereas in 6 suits, the second defendant was Hindustan Steel Limited and in 3 others, the second defendant was Indian Iron and Steel Company Limited. The cause of action in all the said suits was that “due to the negligence or deliberate action of the servants of both defendants, there was a shortage in the delivery of iron and steel material ordered by the plaintiff to various sites in the State of Bihar in connection with the construction work of the Gandak Project”. It will be relevant to refer to the following observations made in the said judgment:

“**3.** Clauses (a), (b) and (c) of the article specify the parties who can appear as disputants before this Court. Under clause (a) it is the Government of India and one or more States; under clause (b) it is the Government of India and one or more States on one side and one or more other States on the other, while under clause (c) the parties can be two or

more States without the Government of India being involved in the dispute. The specification of the parties is not of an inclusive kind. **The express words of clauses (a), (b) and (c) exclude the idea of a private citizen, a firm or a corporation figuring as disputant either alone or even along with a State or with the Government of India in the category of a party to the dispute.** There is no scope for suggesting that a private citizen, a firm or a corporation can be arrayed as a party by itself on one side and one or more States including the Government of India on the other. Nor is there anything in the article which suggests a claim being made by or preferred against a private party jointly or in the alternative with a State or the Government of India. **The framers of the Constitution appear not to have contemplated the case of a dispute in which a private citizen, a firm or a corporation is in any way involved as a fit subject for adjudication by this Court under its exclusive original jurisdiction conferred by Article 131.**

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9. So far as the proceedings of the Joint Committee on Indian Constitutional Reform and the report of the Committee on the same are concerned, they make it clear **that the object of conferring exclusive original jurisdiction on the Federal Court was that the disputes of the kinds specified between the Federation and the Provinces as the constituent units of the Federation,** should not be left to be decided by courts of law of a particular unit **but be adjudicated upon only by the highest tribunal in the land which would be beyond the influence of any one constituent unit.**

10. Although Article 131 does not defines the scope of the disputes which this Court may be called upon to determine in the same way as Section 204 of the Government of India Act, and we do not find it necessary to do so this much is certain that the

**legal right which is the subject of dispute must arise in the context of the constitution and the Federalism it sets up. However, there can be no doubt that so far as the parties to the dispute are concerned, the framers of the Constitution did intend that they could only be the constituent units of the Union of India and the Government of India itself arrayed on one side or the other either singly or jointly with another unit or the Government of India.**

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**18.** It was argued by counsel on behalf of the State of Bihar that so far as the Hindustan Steel Limited, is concerned it is “State” and the suits in which the Government of India along with Hindustan Steel Limited, have been impleaded are properly filed within Article 131 of the Constitution triable by this Court in its original jurisdiction. Reference was made to the case of *Rajasthan State Electricity Board v. Mohan Lal* [1967 3 SCR 377] . There the question arose between certain persons who were permanent employees of the Government of the State of Rajasthan and later placed at the disposal of the State Electricity Board and one of the questions was whether the appellant Board could be held to be “State” as defined in Article 12. This Court by a majority held that the Board was “other authority” within the meaning of Article 12 and therefore was a “state” to which appropriate directions could be given under Articles 226 and 227 of the Constitution. **It will be noted that under Article 12 all local or other authorities within the territory of India or under the control of the Government of India are “States” for purposes of Part III which defines and deals with the Fundamental Rights enshrined in the Constitution. The expression “the State” has the same meaning in Part IV of the Constitution under Article 36.** No reason was shown as to why the enlarged definition of “State” given in Parts III and IV of the Constitution would be attracted to

Article 131 of the Constitution **and in our opinion a body like the Hindustan Steel Limited cannot be considered to be “a State” for the purpose of Article 131 of the Constitution.**”

[emphasis supplied]

**33.** It could be seen that this Court held that the express words of clauses (a), (b) and (c) of Article 131 of the Constitution exclude the idea of a private citizen, a firm or a corporation figuring as a disputant either alone or even along with a State or with the Government of India in the category of a party to the dispute. It has been held that the framers of the Constitution did not contemplate a dispute in which a private citizen, a firm or a corporation is in any way involved as a fit subject for adjudication by this Court under its exclusive original jurisdiction conferred by Article 131 of the Constitution. It further observed that the legal right which is the subject of dispute must arise in the context of the Constitution and the Federalism it sets up. It has been unequivocally held that there can be no doubt that so far as the parties to the dispute are concerned, the framers of the Constitution did intend that they could only be the constituent units of the Union of India and the Government of India itself arrayed on one side or the other, either singly



or jointly with another unit or the Government of India. The Court then observed that, under Article 12 of the Constitution, all local or other authorities within the territory of India or under the control of the Government of India are “States” for purposes of Part III of the Constitution which defines and deals with the Fundamental Rights enshrined in the Constitution. It further observed that the expression “the State” has the same meaning as in Part IV of the Constitution under Article 36. It therefore observed that a body like the Hindustan Steel Limited cannot be considered to be “a State” for the purpose of Article 131 of the Constitution. A strong reliance has been placed on these observations by the learned Solicitor General.

***b. State of Rajasthan v. Union of India:***

**34.** The learned Solicitor General strongly relies on the judgment of this Court in the case of ***State of Rajasthan and Others v. Union of India and Others*** (supra). The brief facts of the said case are as under:

“In the elections held in March, 1977, the Janata party had secured overwhelming majority in the Lok Sabha. In some of the States, the Congress was continuing in power. In view of the complete and unequivocal rejection of the Congress Party, the

Union Home Minister addressed a communication on 18<sup>th</sup> April 1977 to nine States asking them to advise their respective Governors to dissolve the Assemblies and seek a fresh mandate from the people. Some of the States had filed suits before the Supreme Court praying for a declaration that the letter of the Union Home Minister was illegal and ultra vires of the Constitution of India and not binding on the plaintiffs and prayed for an interim injunction restraining the Central Government from restoring to Article 356 of the Constitution. Preliminary objections were raised on behalf of the defendant – Union of India against the maintainability of the suits under Article 131 of the Constitution of India. The preliminary objections were raised on two grounds. The first was that under Article 131 of the Constitution of India, the ‘State’ and not the ‘State Government’ should be a party. The second was that the present matter did not involve a legal dispute.”

**35.** It will be apposite to refer to the following paragraphs of the said judgment of Y.V. Chandrachud, J. (as His Lordship then was):

**“108. The absence of the expression “State Government” and the use in its place of the expression “State” in Article 131, is said to furnish intrinsic evidence that for a suit to fall under that article, the dispute must arise between the Government of India and a State, not between the Government of India and the Government of a State.** The intrinsic evidence, it is argued, assumes greater credibility in the context that the article does employ the expression “Government of India” when what was meant was the government, as contra distinguished from the State. The presence of the particular expressions in Article 131 does not, in my opinion, support the

inference suggested on behalf of the Union of India. The use of the phrase “Government of India” in Article 131(a) and (b) does not mean that one party to the dispute has to be the Government of the day at the Centre. “Government of India” means “Union of India” because if there be merit in the logic that Article 131 does not comprehend disputes in which the Government of a State as contrasted with the State itself is interested, it must follow that correspondingly, the “Government of India” too cannot mean the Government for the time being in power at the Centre. The true construction of Article 131(a), true in substance and true pragmatically, is that a dispute must arise between the Union of India and a State.

**109.** This may sound paradoxical because if the preliminary objection is unsustainable, it would be easier to say that the expression “Government of India” means “Government in office” and the expression “State” means the State as a polity and not “the Government in Office”. But convenient interpretations are apt to blur the significance of issues involved for interpretations. Therefore, the effort has to be to accept what the words truly mean and to work out the constitutional scheme as it may reasonably be assumed to have been conceived.

**110. The dispute between the Union of India and a State cannot but be a dispute which arises out of the differences between the Government in office at the Centre and the Government in office in the State.** “In office” means “in power” but the use of the latter expression may prudently be avoided with the realisation of what goes with power. But there is a further prerequisite which narrows down the ambit of the class of disputes which fall within Article 131. That requirement is that the dispute must involve a question, whether of law or fact, on which the existence or extent of a legal right depends. It is this qualification which affords the true guide for determining whether a particular dispute is comprehended within Article

**131. Mere wrangles between governments have no place in the scheme of that article.** They have to be resolved elsewhere and by means less solemn and sacrosanct than a court proceeding. **The purpose of Article 131 is to afford a forum for the resolution of disputes which depend for their decision on the existence or extent of a legal right. It is only when a legal, not a mere political, issue arises touching upon the existence or extent of a legal right that Article 131 is attracted.**

.....

**113. I find it difficult to accept that the State as a polity is not entitled to raise a dispute of this nature. In a federation, whether classical or quasi-classical, the States are vitally interested in the definition of the powers of the Federal Government on one hand and their own on the other. A dispute bearing upon the delineation of those powers is precisely the one in which the federating States, no less than the Federal Government itself, are interested. The States, therefore, have the locus and the interest to contest and seek an adjudication of the claim set up by the Union Government. The bond of constitutional obligation between the Government of India and the States sustains that locus.**

**114.** The expression “legal right” which occurs in Article 131 has to be understood in its proper perspective. In a strict sense, legal rights are correlative of legal duties and are defined as interests which the law protects by imposing corresponding duties on others. But in a generic sense, the word “right” is used to mean an immunity from the legal power of another: immunity is exemption from the power of another in the same way as liberty is exemption from the right of another. Immunity, in short, is “no-subjection”. [Salmond's Jurisprudence 11th Edn. pp. 276-7] R.W.M. Dias says in his “*Jurisprudence*” (1976 Edn.,

pp. 33-4) that the word “right” has undergone successive shifts in meaning and connotes four different ideas concerning the activity, or potential activity, of one person with reference to another. One of these four jural relationships, according to the learned Author, is the “you cannot” relationship, which is the same thing as the right of immunity which “denotes freedom from the power of another” (p. 58). Paton's book on *Jurisprudence* (3rd Edn. p. 256) contains a similar exposition of legal rights. **The legal right of the States consists in their immunity, in the sense of freedom from the power of the Union Government. They are entitled, under Article 131, to assert that right either by contending in the absolute that the Centre has no power to dissolve the Legislative Assemblies or with the qualification that such a power cannot be exercised on the ground stated.**

**115.** It is true that the State, like the British Monarch, never dies. A Legislative Assembly may be dissolved, a Council of Ministers may go out of power, the President's rule may be introduced or imposed, or an emergency may be declared which can conceivably affect the States' powers in matters legislative and executive. The State survives these upheavals. **But it is constitutionally unsound to say that the State, as a political entity, has no legal interest in such cataclysmic events and no legal rights to assert in relation thereto. Were it so, which then are the legal rights which the State, as distinguished from its Government, can agitate under Article 131? Whatever be the nature of the claim, the argument can always be put forward that the Government, not the State, is interested in making that claim. Such a rigid interpretation of the scope of Article 131 will virtually reduce it to a dead-letter and destroy a precious safeguard against the use of arbitrary power.** The interpretation canvassed by the learned Additional Solicitor General must, therefore, be avoided, insofar as the language of the article permits it which in my opinion it does.

.....

**117.** The judgment of this Court in *State of Bihar v. Union of India* [(1970) 1 SCC 67 : (1970) 2 SCR 522] affords no real assistance on the question arising before us. In that case, the Court raised three issues in the suits filed under Article 131. The first issue which related to the question whether the suits were within the scope of Article 131 was not answered by the Court because it held on the second issue that the suits were not maintainable, since a private party was impleaded thereto. The only assistance which may be derived from the judgment in that case is that it said that the disputes under Article 131 should be “in respect of legal rights and not disputes of a political character” **and that though it was unnecessary to define the scope of Article 131, “this much is certain that the legal right which is the subject of dispute must arise in the context of the Constitution and the Federalism it sets up”** (p. 529). These observations do not affect the construction which I have placed on Article 131. **I have endeavoured to show that it is competent to the State Governments to bring suits of the present nature under that article and that by these suits, the State Governments are raising a legal, not a political, issue. Their assertion is that the Government of India does not possess the constitutional power claimed by it and therefore, this Court should declare that they are immune from the exercise of that power. The States assert their legal right of immunity which, as explained above, denotes freedom from the power of another.”**

[emphasis supplied]

**36.** It could thus be seen that Justice Chandrachud observed that the true construction of Article 131(a), true in

substance and true pragmatically, is that a dispute must arise between the Union of India and a State. His Lordship further observed that the dispute between the Union of India and a State cannot but be a dispute which arises out of the differences between the Government in office at the Centre and the Government in office in the State. It was further held that the further requirement for a dispute to fall within the ambit of the classes of disputes under Article 131 of the Constitution is that the dispute must involve a question, whether of law or fact, on which the existence or extent of a legal right depends. It was further observed that mere wrangles between governments have no place in the scheme of that article. His Lordship further held that the purpose of Article 131 is to afford a forum for the resolution of disputes which depend for their decision on the existence or extent of a legal right. It has been held that it is only when a legal, not a mere political issue arises touching upon the existence or extent of a legal right that Article 131 of the Constitution is attracted.

**37.** Justice Chandrachud specifically rejected the contention that the State as a polity was not entitled to raise

a dispute of the nature raised herein. His Lordship observed that in a federation, whether classical or quasi-classical, the States are vitally interested in the definition of the powers of the Federal Government on one hand and their own on the other. A dispute bearing upon the delineation of those powers is precisely the one in which the federating States, no less than the Federal Government itself, are interested. It was also observed that the States therefore have the locus and the interest to contest and seek an adjudication of the claim set up by the Union Government. The bond of constitutional obligation between the Government of India and the States sustains that locus. His Lordship further observed that the legal right of the States consists in their immunity, in the sense of freedom from the power of the Union Government. It has been held that the States are entitled, under Article 131, to assert that right either by contending in the absolute that the Centre has no power to dissolve the Legislative Assemblies or with the qualification that such a power cannot be exercised on the ground stated. It has been held that it is constitutionally unsound to say that the State, as a political entity, has no legal interest in such cataclysmic



events and no legal rights to assert in relation thereto. The Court specifically rejected the argument on the rigid interpretation of the scope of Article 131 and observed that if such an interpretation was to be accepted, it would virtually reduce it to a dead-letter and destroy a precious safeguard against the use of arbitrary power.

**38.** After referring to the judgment in the case of ***State of Bihar v. Union of India and Another*** (supra), His Lordship observed that, in the said case, the Court held that on the second issue, the suits were not maintainable since a private party was impleaded thereto. His Lordship further observed that the only assistance that could be derived from the said judgment was that the disputes under Article 131 should be “in respect of legal rights and not disputes of a political character”. His Lordship further observed that the assertion of the States was that the Government of India did not possess the constitutional power claimed by it and therefore, this Court should declare that they are immune from such exercise of that power.

**39.** With the aforesaid observations, the Court rejected the preliminary objections with regard to maintainability of the

suits therein. Justice Chandrachud, further observed thus:

“**138.** That takes us to the question of maintainability of the suits. There are six suits before us filed by the States of Rajasthan, Madhya Pradesh, Punjab, Bihar, Himachal Pradesh and Orissa. Each of these suits has been filed under Article 131 of the Constitution. This Article confers original jurisdiction on the Supreme Court, to the exclusion of all other courts, in respect of certain categories of suits and is in the following terms:

“131. Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

(a) between the Government of India and or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States,

if and insofar as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instrument which having been entered into or executed before the commencement of the Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.”

There are two limitations in regard to the nature of the suit which can be entertained by the Supreme

Court under this Article. One is in regard to parties and the other is in regard to the subject-matter. The Article provides in so many terms in clauses (a), (b) and (c) that the dispute must be between the Government of India and one or more States, or between the Government of India and any other State or States on one side and one or more other States on the other, or between two or more States. **It does not contemplate any private party being arrayed as a disputant on one side or the other. The parties to the dispute must fall within one or the other category specified in clauses (a), (b) and (c). That was established by a decision of this Court in *State of Bihar v. Union of India* [(1970) 1 SCC 67 : (1970) 2 SCR 522]** where this Court pointed out:

“a dispute which falls within the ambit of Article 131 can only be determined in the forum mentioned therein, namely, the Supreme Court of India, provided there has not been impleaded in any said dispute any private party, be it a citizen or a firm or a corporation along with a State either jointly or in the alternative. A dispute in which such a private party is involved must be brought before a court, other than this court, having jurisdiction over the matter.”

This is the limitation as to parties. The other limitation as to subject-matter flows from the words “if and insofar as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends”. These words clearly indicate that the dispute must be one relating to a legal right and not a dispute on the political plans not based on a legal right, for instance, to take an example given by Mr Seervai in his well known work on “*Constitutional Law of India*” at p. 1385: “a claim that a State project should be included in the Five-Year Plan.” The dispute must, therefore, involve assertion or vindication of a legal right of the

Government of India or a State. It is not necessary that the right must be a constitutional right. All that is necessary is that it must be a legal right. **It is true that in the *State of Bihar v. Union of India* this Court, while discussing the scope of the dispute which may be determined by the Supreme Court under Article 131, happened to make an observation that “this much is certain that the legal right which is the subject of dispute must arise in the context of the Constitution and the federalism it sets up”.** But this observation, insofar as it suggests that the “legal right” must be one which arises under the Constitution, goes much further than what the language of Article 131 warrants. The Article speaks only of “legal right” and does not qualify it by any other words. It may be noted that the provision in the corresponding Section 204 of the Government of India Act, 1935 was significantly different. It contained a proviso that the dispute must inter alia concern the interpretation of the Government of India Act, 1935 “or of an Order in Council made thereunder or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State”. **This provision has been deliberately and designedly omitted in Article 131 and now *any* legal right can be enforced by a suit in the Supreme Court provided the parties fill the character specified in clauses (a), (b) and (c). The question which therefore requires to be considered in determining the maintainability of the suits is whether *any legal right of the States* is sought to be vindicated in the suits. We shall presently consider this question, but before we do so, we must point out one other error in which, with the greatest respect, the learned Judges who decided the case of *State of Bihar v. Union of India* seem to have fallen.** They held that in a suit under Article 131 the only order which the Supreme Court could make was a declaration adjudicating on the legal right claimed

in the suit and once such a declaration was given, the function of the Supreme Court under Article 131 was at an end. If this conclusion were correct, then obviously the present suits seeking permanent injunction restraining the Government of India from issuing a proclamation under Article 356 clause (1) could not lie and equally no interim injunction could be granted by this Court, but the learned Additional Solicitor General, with his usual candour and fairness, conceded that he was not in a position to support this view. This view seems to be erroneous and for two very good reasons. In the first place, it overlooks the fact that whereas sub-section (2) of Section 204 of the Government of India Act, 1935 provided that the Federal Court, in exercise of its original jurisdiction, shall not pronounce any judgment, other than a declaratory judgment, no such provision limiting the power of the Supreme Court in regard to the relief to be granted is to be found in Article 131. The power of the Supreme Court to grant relief in a suit under Article 131 is not restricted only to “declaratory judgment”. Secondly, as pointed out by Mr Seervai in his book at p. 1385, “when a court is given exclusive jurisdiction in respect of a dispute between the parties, it is reasonable to hold that the Court has power to resolve the whole dispute”, unless its power is limited by express words or by necessary implication. There is no such limitation in Article 131 and hence it is not correct to say that the Supreme Court can only give a declaratory judgment in a suit under Article 131. The Supreme Court would have power to give whatever reliefs are necessary for enforcement of the legal right claimed in the suit if such legal right is established.”

[emphasis supplied]

**40.** It could thus be seen that His Lordship approved the ratio in ***State of Bihar v. Union of India and Another***

(supra) to the effect that the suit under Article 131 of the Constitution does not contemplate any private party being arrayed as a disputant on one side or the other. It held that the parties to the dispute must fall within one or the other category specified in clauses (a), (b) and (c) of Article 131 of the Constitution.

**41.** His Lordship disapproved the observations made in the case of ***State of Bihar v. Union of India and Another*** (supra) to the effect that “*this much is certain that the legal right which is the subject of dispute must arise in the context of the Constitution and the federalism it sets up*”. His Lordship held that the suggestion that the legal right must be one which arises under the Constitution, goes much further than what the language of Article 131 of the Constitution warrants.

**42.** Justice Chandrachud further pointed out that, under the Government of India Act, 1935, Section 204 provided that the dispute must *inter alia* concern the interpretation of the Government of India Act, 1935 or of an Order in Council made thereunder or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument

of Accession of that State. It has been observed that the said provisions have been deliberately and designedly omitted in Article 131 of the Constitution and now any legal right can be enforced by a suit in this Court provided the parties fill the character specified in clauses (a), (b) and (c) of Article 131 of the Constitution. What is required to be considered is that in determining the maintainability of the suits, whether any legal right of the States is sought to be vindicated or not. His Lordship, in paragraph 142, specifically observed that the suits for consideration before it sought to enforce a legal right of the States arising under the Constitution and the suits could not be thrown out *in limine* as being outside the scope and ambit of Article 131 of the Constitution. The same view has been taken by Justice P.K. Goswami in paragraph 159 with regard to parties that may be impleaded in a suit under Article 131 of the Constitution as well as with regard to the subject matter of the litigation.

**43.** In the light of the law laid down in the case of ***State of Rajasthan and Others v. Union of India and Others*** (supra), which is a judgment of seven Judges of this Court, we will have to examine the rival submissions.

## **VI. CONSIDERATION:**

### ***a. Reading of the Complaint:***

**44.** As observed hereinabove, in a catena of judgments, it has been held that for considering the preliminary objections, only the averments made in the complaint are to be looked into to determine as to whether a cause of action has been made out or not. In that regard, it will be relevant to refer to some of the paragraphs in the complaint, which read thus:

“3. Article 246(1) empowers the Parliament with exclusive power to make laws with respect to any of the matters enumerated in List I, Seventh Schedule (known as the Union List). Entry 80, List I is relevant in this regard:

*“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.”*

4. That the police powers come within the State’s exclusive jurisdiction is also recognized in Article 246(3) of the Constitution, which provides that the State has exclusive power to make laws for such state for any of the matters enumerated in List II. Specifically, of such matters, Entry 1 and Entry 2 are relevant which are:

*“1. Public order (but not including the use*



*of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power).*

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

5. Entries 1 and 2 of List II, the Seventh Schedule to the Constitution of India thus prescribe that public order and the police are exclusive subject matters of the concerned State. Further Entry 80, List I, ensures that the Union/Center does not transgress into the jurisdiction of the State without permission of the concerned State.

6. The CBI which draws its powers under the DSPE Act has acted in violation of the aforementioned Constitutional provisions and the DSPE Act. The DSPE Act, as its preamble provides, was enacted to make provisions for the constitution of a Special ‘Police Force’ in Delhi for the investigation of certain offences in the Union Territory, for the superintendence and administration of the said Force and for the extension of its powers and jurisdiction in regard to the investigation of the said offences. Section 2 of the DSPE Act provides for constitution of the force, Section 3 thereof prescribes the offence which are to be investigated by CBI; Section 5 of DSPE Act provides extension of power and jurisdiction of CBI into any area (including a railway area) in a State; Section 6 thereof expressly provides that the force/CBI is required to obtain the consent of the concerned State in case of exercise of such power in terms of Section 5 of the DSPE Act.

7. Section 6 of the DSPE Act is the statutory recognition of the principle of federalism which forms a part of the basic structure of the Constitution of India, as also protected under Entry 80, List I and Entries 1 and 2, List II, Constitution of India. In absence of Section 6 in the statute book,

the piece of legislation would have attracted the vice of unconstitutionality.

8. Any act of the CBI in violation of Section 6, DSPE Act, strikes at the roots of federalism, which this Hon'ble Court in *S.R. Bommai v. Union of India*, 1994 SCC (3) 1, has held to be a part of the Constitution's basic structure. Therefore, the CBI's exercise of powers by violating Section 6, DSPE Act, subverts the basic structure of the Constitution.

9. Under the Constitution, a threefold distribution of legislative power by the three Legislative Lists in the Seventh Schedule to the Constitution of India has been conceptualized (vide Article 246). List II of the Seventh Schedule to the Constitution of India is the part and parcel of a single constitutional instrument envisaging a federal scheme. It thus confers plenary power on the State to legislate on certain exclusive subject matters which includes "public order" and "police" in a State.

10. Section 6 of the DSPE Act is a component of such federalism that provides for a prior approval of the State in case Centre wishes to transgress in the territory of the State and usurping the powers of the police force of the State.

11. The provision of Section 6 therefore, assumes immense significance and therefore, cannot be ignored and violated by the Defendant. Any such attempt on the part of the Defendant would cause an inroad to the constitutionalism and therefore, this Hon'ble Court being the conscience keeper of the Constitution ought not to permit the Defendant to do so.

12. In *State of West Bengal and others v. Committee for Protection of Democratic Right, West Bengal and others* reported in (2010) 3 SCC 571, this Hon'ble Court held that although Section 5(1), DSPE Act empowers the Central Government to extend power and jurisdiction of members of the DSPE force to any area in a State, Section 6

imposes a restriction on such power of the Central Government requiring it to obtain the consent of the concerned State Government. This Hon'ble Court further held that the only exception is when either the Hon'ble High Courts or this Hon'ble Court, in exercise of its jurisdiction under Article 226 or 32 of the Constitution, respectively, directs the CBI to investigate a cognizable offence allegedly to have been committed within the territory of a state without the consent of that particular state; such direction under Articles 226 or 32 of the Constitution will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power, and shall be valid in law.

13. In the instant proceeding, the Plaintiff is challenging the act of the defendant in registering *suo moto* cases for offences that have occurred within the territory of the plaintiff *dehors* any direction from any competent court or prior consent granted by the Plaintiff.

14. In this regard, Section 6 of the DSPE Act is crucial since it requires prior consent of the State Government for exercising power and jurisdiction under the DSPE Act by CBI to any area in a State not having Union Territory or Railways. Before the provision of DSPE Act are invoked to authorize the CBI to exercise its power and jurisdiction within any State, the following conditions are to be specified compulsorily.

i) A notification must be issued by the Central Government specifying the offences to be investigated by CBI (Section 3);

ii) An order must be passed by the Central Government extending power and jurisdiction of CBI to any area (including railway area) in a State not being an Union Territory in respect of offences specified under Section 3 (Section 5); and

iii) Consent of the State Government must be obtained for the exercise of power by CBI in the concerned State (Section 6).

15. Thus, from a plain reading of the law, it is evident that the CBI does not have any inherent jurisdiction in any area in a State including a railway area. The DSPE has to mandatorily meet the requirements of Section 3 and Section 5, DSPE Act, and thereafter its powers become subject to the consent of the State under Section 6, DSPE Act.

16. This Hon'ble Court has held that fulfillment of all three conditions under Sections 3,5, and 6 are required prior to the CBI exercising its powers in any State (*M. Balakrishna Reddy v. CBI*, (2008) 4 SCC 409).

17. On February 18, 1963, the Defendant under Section 3 (1) of the DSPE Act notified a class of offences, wherein, the power to investigate given to be vested with CBI. On February 18, 1963, by order No. 25/12/6-AVD-II, issued by Ministry of Home Affairs, Government of India Act, under Section 5, DSPE Act extended jurisdiction of members of the Delhi Special Police Establishment to various states, including the State of West Bengal.

18. On August 2, 1989, in exercise of its powers under Section 6, DSPE Act, the Plaintiff vide Notification being G.O. No. 6845-PL/PE/2A- 10/88, accorded its consent to CBI to exercise the power and jurisdiction within the territory of the State of West Bengal for certain offences, except for public servants employed in connection with the affairs of the State or any Authority controlled or aided wholly or partly by the State Government for which the specific request and with the prior concurrence of the State Government was required.

19. On November 16, 2018, the Plaintiff, in exercise of its powers under Section 6, DSPE Act, withdrew the aforesaid consent accorded vide G.O. No. 6845-PL/PE/2A-10/88 dated August 2, 1989.

Thus, the Plaintiff, during the period August 2, 1989 to November 16, 2018, had given a limited consent to the CBI to investigate certain offences pertaining to persons who were not employed in connection with the affairs of the State Government/authority controlled or aided by the State Government. However, after November 16, 2018, the CBI would have been required to obtain the prior and specific consent of the Plaintiff for exercise of any power under the DSPE Act in the State of West Bengal.

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21. The cause of action for filing this suit thus does not arise from any one particular event or case but arises due to the fact that the CBI, despite the withdrawal of consent by the State under Section 6, DSPE Act, has registered cases and has been exercising its powers under the DSPE Act in an unconstitutional manner. This impacts many cases and investigation of offences that ought to be done by the State Police. The details of some of the cases registered by the CBI without obtaining consent of the Plaintiff, which gives rise to a continuing cause of action, are as follows:

<b>Sl. No.</b>	<b>Date of Registration</b>	<b>Regular Case No.</b>
1.	17/11/2018	RC0102018A0011
2.	19/11/2018	RC0102018A0012
3.	23/08/2019	RC0562019S0004
4.	30/09/2019	RC0562019S0005
5.	21/09/2020	RC0102020A0018
6.	21/09/2020	RC0102020A0019
7.	22/09/2020	RC0102020A0020
8.	19/10/2020	RC0102020A0021
9.	27/11/2020	RC0102020A0022
10.	07/12/2020	RC0102020A0023
11.	29/01/2021	RC0732021E0001
12.	15/06/2021	RC0102021A0003

22. All of the abovementioned FIRs concern

offences under laws such as the Indian Penal Code 1860 and/or Prevention of Corruption Act, 1988, all of which the State/Kolkata Police is empowered to investigate by statute. Therefore, the CBI in exercising its powers under the DSPE Act, without the requisite State consent is not only violating Section 6, DSPE Act, but also usurping and ousting State/Kolkata Police's statutory jurisdiction over such offences.

23. Such action of the Defendant violates the Constitutional provisions, the DSPE Act, and derogates from the doctrine of federalism. By registration of these cases, the Defendant herein has rendered the provisions under Section 6 of the DSPE Act nugatory.

24. The requirement of obtaining consent of the concerned state to enable CBI to investigate in the said state under section 6 of the DSPE Act aligns with the principles of federalism as envisaged in the constitution which has vested the state with the power to exercise exclusive jurisdiction by making laws with respect to police under Entry 2 of the State List of the Seventh Schedule read with Article 246(3) of the Constitution of India.

.....

29. In accordance with the provisions of Constitution and the law interpreted by this Hon'ble Court, the Plaintiff State will suffer grave constitutional prejudice in case the Defendant is allowed to operate its own police force within the State of West Bengal in absence of previous approval of the Plaintiff State. Thus, there exists a dispute, involving of question of law and fact, between the Plaintiff State of West Bengal and the Defendant Union of India, regarding the encroachment of jurisdiction and encroachment of legal rights as a State and as well as for the enforcement of the fundamental, statutory constitutional and other legal rights of the State of West Bengal. Hence, this Original Suit under Article 131 of the Constitution of India is being preferred.

30. The action of the Defendant is an act of constitutional overreach inasmuch as by registering cases within the State of West Bengal in absence of the consent of the Plaintiff, the Defendant has exceeded its jurisdiction and has acted contrary to the scheme of Constitution and DSPE statute.

31. Such action of the Defendant also violates the law laid down by this Hon'ble Court that no investigation can be conducted within the territory of a State in absence of consent under Section 6 of the DSPE Act (see *Kazi Lehendup Dorji v. CBI, & Ors* 1994 Supp (2) SCC 116 (para 4,9,17); *Subramanian Swami v. CBI* 2014 (8) SCC 682 (Para 67,68); *State of West Bengal v. Committee for Protection of Democratic Right, West Bengal & Ors.* 2013(3) SCC 571 (Para 35,37); *Mayawati v. Union of India* (2012) 8 SCC106 (Para 9, 30, 41, 44); *A.C Sharma v. Delhi Administration*, 1973 (1) SCC 726 (Para 13); *M Balakrishnan v. Director, CBI Delhi* 2008 (4) SCC 409 (Para 18, 19)).

32. It is well settled that when differences arise between the representative of the State and that of the Union on questions of interpretation of the Constitution and law which may affect the welfare of the whole people and particularly that of the people of the State concerned, a suit under Article 131 of the Constitution lies. Given the aforesaid statutory obligation of the Defendant, the Plaintiff being the repository of people on the subject of law and order in State, the Defendant cannot cause investigation into the offences in the State. Since there cannot be two parallel investigations in respect of the same offence, the registration of FIRs by the Defendant precludes the State from initiating appropriate action on the allegations of this subject. As a consequence thereof, the Plaintiff fails to adhere to the constitutional obligation.

33. Article 131 of the Constitution provides for independent adjudication in case of federal disputes and should be widely and generously interpreted to advance the intended remedy. It can be invoked

whenever a State and other States or Union differ on a question of interpretation of constitution or law so that a decision of it will affect the scope and exercise of the governmental powers which are attributes of a State. The jurisdiction conferred on this Hon'ble Court under Article 131 of the Constitution should not be tested on the anvil of banal rules which are applied under the provisions of Code of Civil Procedure for determining whether a suit is maintainable.

34. The Constitution aims at maintaining a fine balance not only between the legislature, the executive and the judiciary, but also between the powers of the Union and State, as demonstrated by the Legislative Lists and the executive power of the Central Government and the State Governments in part XI of the Constitution. This is a delicate relationship particularly if different political parties are in power in the Centre and in the States. The object of the Articles 245-246 is to ensure that the Central Government and State Governments act within the respective spheres of their authority and do not transgress upon each other's constitutional functions or powers.

.....

36. This present suit is being filed to challenge the constitutionality of the actions of the defendant. Thus, a suit under Article 131 of the Constitution of India challenging the constitutionality of the impugning the action of the Defendant at the instance of a constituent State of the Union is maintainable.

37. A proceeding under Article 131 of the Constitution stands in sharp contrast with an ordinary suit. The proceedings are adjudicatory of the limits of the constitutional power vested in the Central and the State Governments. The competition in such a proceeding is between two or more Governments either the one or the other of which possesses the constitutional power to act.



38. While mere wrangles between the Governments have no place under the scheme, when legal as distinct from a mere political issue arises touching upon the existence or extent of the legal right the article is attracted. There is a distinction between “State” and “State Government”. When a right or capacity or lack of it attributed to any institution of person acting on behalf of the State, it raises a matter in which the State is involved or concerned. The State would therefore be affected by any unconstitutional exercise of power by the Central Government. The word “right” in Article 131 of the Constitution is used in a generic sense. If the State claims to be entitled to legislative exclusivity on a particular matter on the ground that it falls within List II of Seventh Schedule and the Union of India questions this right, despite the constitutional restriction under Entry 80, List I, the dispute is one relating not to not only the right of the State in the strict sense of the term but also of the liberty of the State, and the same would directly come within the scope of Article 131 of the Constitution. It is therefore, evident that the present suit is maintainable by the Plaintiff against the Defendant before this Hon’ble Court under Article 131 of the Constitution. The plaintiff has not filed any other similar suit claiming the same reliefs before this Hon’ble Court or any other Court. The Suit is not barred by limitation as on the date of filing of the present Suit.”

**45.** A perusal of the plaint would reveal that it refers to Article 246(1) of the Constitution which empowers the Parliament with exclusive power to make laws with respect to any of the matters enumerated in List I. It refers to Entry 80 of List I which enables the Parliament to make laws with regard to extension of the powers and jurisdiction of

members of a police force belonging to any State to any area outside that State. However, the same cannot be done without the consent of the Government of the State in which such area is situated. Then, it refers to the exclusive jurisdiction of the State Legislature as recognized in Article 246(3) of the Constitution to make laws with regard to any of the matters enumerated in List II. It refers to Entries 1 and 2 which relate to public order and police. Then, the plaintiff avers that the public order and police are exclusive subject matters of the concerned State. It avers that Entry 80, List I, ensures that the Union/Centre does not transgress into the jurisdiction of the State without permission of the concerned State. It therefore avers that the CBI which draws its powers from the DSPE Act has acted in violation of the aforementioned Constitutional provisions as also the DSPE Act and then it refers to various provisions of the DSPE Act including Section 6 thereof which requires the consent of the Government of the concerned State in whose areas the jurisdiction of the CBI is being extended. Thereafter, it refers to Section 6 of the DSPE Act as a component of the concept of federalism. It avers that the provisions of Section 6 of the

DSPE Act cannot be ignored or violated by the defendant.

**46.** In paragraph 12 of the plaint, the plaint refers to various judgments of this Court interpreting Sections 5(1) and 6 of the DSPE Act. In paragraph 13, the plaint avers that the plaintiff is challenging the act of the defendant in registering *suo moto* cases for offences that have occurred within the territory of the plaintiff without any direction from the competent court or prior consent granted by the plaintiff. Then, in paragraph 14, averments are made with regard to the approval to be made by the Central Government, a rule which is required to be followed by the Central Government in extending powers and jurisdiction of the CBI. Thereafter, it refers to the judgment of this Court which requires the fulfillment of the three conditions under Sections 3, 5 and 6 of the DSPE Act prior to the CBI exercises powers in any State, which read thus:

- i) A notification must be issued by the Central Government specifying the offences to be investigated by CBI (Section 3);
- ii) An order must be passed by the Central Government extending power and jurisdiction of CBI to any area (including railway area) in a State not being an Union Territory in respect of

offences specified under Section 3 (Section 5); and

- iii) Consent of the State Government must be obtained for the exercise of power by CBI in the concerned State (Section 6).

**47.** Thereafter, the plaint refers to the consent granted by the plaintiff under Section 6 of the DSPE Act on 2<sup>nd</sup> August 1989 vide notification issued by it. Then, it refers to the withdrawal of the said consent on 16<sup>th</sup> November 2018.

**48.** Paragraph 21 of the plaint avers regarding the powers of the CBI. It avers that despite withdrawal of the consent given by the plaintiff under Section 6 of the DSPE Act, the CBI has registered cases and has been exercising its powers under the DSPE Act in an unconstitutional manner. The plaint thereafter gives a list of the cases and states that the CBI exercised its powers under the DSPE Act without the requisite consent of the State and as such, not only violated Section 6 of the DSPE Act but also usurped and ousted the State police's statutory jurisdiction.

**49.** In paragraph 24 of the plaint, the averments with regard to principles of federalism are reiterated.

**50.** Paragraph 27 of the plaint states that the present *lis* involves substantial question of law as to the interpretation of Articles 245 and 246 of the Constitution and various Entries in the Seventh Schedule as well as corresponding provisions of Code of Criminal Procedure, 1973 and the DSPE Act.

**51.** In paragraph 29 of the plaint, it is averred that, in case the defendant is allowed to operate its own police force within the State of West Bengal in the absence of previous approval of the plaintiff State, the plaintiff will suffer grave constitutional prejudice. It is therefore averred that there exists a dispute involving question of law and fact between the plaintiff and the defendant – Union of India regarding the encroachment of jurisdiction and legal rights. In paragraph 30 of the plaint, it is averred that the action of the defendant is an act of constitutional overreach. In paragraph 32 and subsequent paragraphs of the plaint, it delineates the scope of Article 131 of the Constitution.

***b. Scheme of the DSPE Act:***

**52.** After considering the averments in the plaint, we now propose to consider the contention of the learned Solicitor

General with regard to Union of India having no superintendence or control over the CBI. For considering the same, it will be necessary to refer to certain provisions of the DSPE Act.

**53.** Section 2 of the DSPE Act reads thus:

**“2. Constitution and powers of special police establishment.—**(1) Notwithstanding anything in the Police Act, 1861 (5 of 1861), the Central Government may constitute a special police force to be called the Delhi Special Police Establishment for the investigation in any Union Territory, of offences notified under Section 3.

(2) Subject to any orders which the Central Government may make in this behalf, members of the said police establishment shall have throughout any Union Territory, in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers of that Union Territory have in connection with the investigation of offences committed therein.

(3) Any member of the said police establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise in any Union Territory any of the powers of the officer in charge of a police station in the area in which he is for the time being and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station.”

**54.** A perusal of sub-section (1) of Section 2 of the DSPE Act clearly shows that it is the Central Government that is entitled to constitute a special police force to be called the DSPE for investigation of cases in any Union Territory of offences notified under Section 3 of the DSPE Act. Sub-section (2) thereof would show that, subject to any orders which the Central Government may make in this behalf, members of the DSPE shall have, throughout any Union Territory, in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers of that Union Territory have in connection with the investigation of offences committed therein. Again, under sub-section (3) thereof, any member of the DSPE of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise, in any Union Territory, any of the powers of the officer in charge of a police station in the area in which he is for the time being and when so exercising such powers, he shall, subject to any such orders as aforesaid, be deemed to be an officer in charge of a police station discharging the functions of such an officer

within the limits of his station.

**55.** Section 3 of the DSPE Act reads thus:

**“3. Offences to be investigated by special police establishment.**—The Central Government may, by notification in the Official Gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment.”

**56.** It is thus clear that the DSPE is entitled to investigate only such offences or classes of offences which are specified by the Central Government by issuing a notification in the official gazette.

**57.** Section 4 of the DSPE Act reads thus:

**“4. Superintendence and administration of Special Police Establishment.**—(1) The superintendence of the Delhi Special Police Establishment insofar as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988), shall vest in the Commission.

(2) Save as otherwise provided in sub-section (1), the superintendence of the said police establishment in all other matters shall vest in the Central Government.

(3) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government (hereinafter referred to as the Director) who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector-General of Police



in respect of the police force in a State as the Central Government may specify in this behalf.”

**58.** A perusal of sub-section (1) of Section 4 of the DSPE Act would reveal that the superintendence of the DSPE insofar as it relates to investigation of offences alleged to have been committed under the PC Act is concerned, shall vest with the CVC. However, sub-section (2) thereof provides that except for what has been provided in sub-section (1) thereof, the superintendence of the said police establishment in all other matters shall vest with the Central Government. Sub-section (3) thereof provides that the administration of the DSPE shall vest in an officer appointed in this behalf by the Central Government who shall exercise, in respect of that police establishment, such of the powers exercisable by an Inspector-General of Police in respect of the police force in a State as the Central Government may specify in this behalf.

**59.** Section 5 of the DSPE Act reads thus:

**“5. Extension of powers and jurisdiction of special police establishment to other areas.—**(1) The Central Government may by order extend to any area (including Railway areas) in a State, not being a Union Territory the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any

offences or classes of offences specified in a notification under Section 3.

(2) When by an order under sub-section (1) the powers and jurisdiction of members of the said police establishment are extended to any such area, a member thereof may, subject to any orders which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of a police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.

(3) where any such order under sub-section (1) is made in relation to any area, then, without prejudice to the provisions of sub-section (2) any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer in charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station.”

**60.** A perusal of sub-section (1) of Section 5 of the DSPE Act would reveal that the Central Government, by an order, is entitled to extend to any area including Railway areas in a State, not being a Union Territory, the powers and jurisdiction of members of the DSPE for the investigation of any offences or classes of offences specified in a notification under Section 3 of the DSPE Act. Sub-section (2) thereof provides that when by an order under sub-section (1), the

powers and jurisdiction of members of the DSPE are extended to any such area, a member thereof may, subject to any orders which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of the police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force. Again, under sub-section (3) thereof, where any such order under sub-section (1) is made in relation to any area, then, without prejudice to the provisions of sub-section (2), any member of the DSPE of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer in charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station.

**61.** Section 6 of the DSPE Act reads thus:

**“6. Consent of State Government to exercise of powers and jurisdiction.**—Nothing contained in section 5 shall be deemed to enable any member of

the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union Territory or railway area, without the consent of the Government of that State.”

**62.** A perusal of Section 6 of the DSPE Act would reveal that nothing contained in Section 5 shall be deemed to enable any member of the DSPE to exercise powers and jurisdiction in any area in a State, not being a Union Territory or railway area, without the consent of the Government of that State.

**63.** A perusal of the entire scheme would therefore reveal that right from the constitution of the special police force which is called DSPE, issuance of notifications specifying the offences or classes of offences which are to be investigated by the DSPE, superintendence and administration of DSPE and the extension of powers and jurisdiction of DSPE to the areas beyond the Union Territories, it is the Central Government which is vitally concerned with. Not only that, only such offences which the Central Government notifies in the official gazette, can be investigated by the DSPE. Under Section 4 of the DSPE Act, except the offences under the PC Act in which the superintendence will be with the CVC, the superintendence of the DSPE in all other matters would vest

with the Central Government.

**64.** If the powers and jurisdiction of the members of the DSPE are to be extended to any area including railway areas, in a State not being a Union Territory, the same cannot be done unless the Central Government passes an order in that regard. The statutory scheme makes it clear that, for extending such powers under Section 5 of the DSPE Act, it cannot be done without the consent of the Government of that State under Section 6 of the DSPE Act.

**65.** In that view of the matter, we find that the contention of the learned Solicitor General that even if the CBI, being an independent agency, is considered to be an instrumentality of the State under Article 12 of the Constitution, it cannot be equated to the term Government of India as contemplated under Article 131 of the Constitution, in our view, holds no water.

**66.** We further find that the very establishment, exercise of powers, extension of jurisdiction, the superintendence of the DSPE, all vest with the Government of India. In that view of the matter, in our opinion, the reliance placed by the learned Solicitor General on the judgment of this Court in the case of

***State of Bihar v. Union of India and Another*** (supra), is not well placed. In our view, the CBI is an organ or a body which is established by and which is under the superintendence of the Government of India in view of the statutory scheme as enacted by the DSPE Act.

***c. Power of superintendence of the Central Government:***

**67.** Insofar as reliance placed by the learned Solicitor General on the judgments of this Court in the cases of ***Vineet Narain*** (supra) and ***State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others***<sup>18</sup> is concerned, no doubt that the powers of superintendence of the Central Government would not relate to the superintendence of investigation of a particular case and the investigating agency (CBI) would always be entitled to investigate the offences independently. However, that would not water down the administrative control and superintendence of the DSPE that vests with the Central Government. In that view of the matter, we find that the contention in that regard needs to be rejected.

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<sup>18</sup> (2010) 3 SCC 571 : 2010 INSC 104

***d. Interpretation of the term “subject to the provisions of this Constitution”:***

**68.** The learned Solicitor General has vehemently argued that, in view of the term “subject to the provisions of this Constitution” used in Article 131 of the Constitution, since various matters are already pending with regard to the subject matter of the present suit, be it the proceedings either under Article 136, Article 32 or Article 226 of the Constitution, the present suit would not be maintainable.

**69.** No doubt that Article 131 of the Constitution begins with the term “subject to the provisions of this Constitution”. To understand the said term, we can gainfully refer to a few authorities.

**70.** In Black’s Law Dictionary, 5<sup>th</sup> Edition at Page 1278, the expression “subject to” has been defined as under:

“Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for.”

**71.** A Constitution Bench of this Court in the case of ***The South India Corporation (P) Limited v. The Secretary, Board of Revenue, Trivandrum and Another***<sup>19</sup> also had an

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<sup>19</sup> [1964] 4 SCR 280 : 1963 INSC 163

occasion to consider the said term, though it was in a case concerning Article 372 of the Constitution. It will be apposite to refer to the following part of the said judgment of the Constitution Bench:

“**13.** .....Article 372 reads:

“(i) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority.

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*Explanation I.—The expression “law in force” in this article shall include a law passed or made by a legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.”*

The object of this article is to maintain the continuity of the pre-existing laws after the Constitution came into force till they were repealed, altered or amended by a competent authority. Without the aid of such an article there would be utter confusion in the field of law. The assumption underlying the article is that the State laws may or may not be within the legislative competence of the appropriate authority under the Constitution. The article would become ineffective and purposeless if it was held that pre-Constitution laws should be



such as could be made by the appropriate authority under the Constitution. The words “subject to the other provisions of the Constitution” should, therefore, be given a reasonable interpretation, an interpretation which would carry out the intention of the makers of the Constitution and also which is in accord with the constitutional practice in such matters. The article posits the continuation of the pre-existing laws made by a competent authority notwithstanding the repeal of Article 395; and the expression “other” in the article can only apply to provisions other than those dealing with legislative competence.

**14.** The learned Advocate-General relied upon the following decisions for the said legal position : *Gannon Dankerly and Co. v. Sales Tax Officer, Maatancherry* [ILR (1957) Kerala 462] ; *Sagar Mall v. State* [ILR (1952) 1 All 862] ; *Kanpur Oil Mills v. Judge (Appeals) Sales Tax, Kanpur* [AIR 1955 All 99] ; *Amalgamated Coalfields Ltd. v. Janapada Sabha, Chhindwara* [(1962) 1 SCR 1] ; *Jagdish Prasad v. Saharanpur Municipality* [AIR 1961 All 583] ; *Saeoshankar v. M.P. State* [AIR 1951 Nag 58] ; *State v. Yash Pal* [AIR 1957 P&H 91] ; and *Binoy Bhusan v. States of Bihar* [AIR 1954 Pat 346] . It is not necessary to consider in detail the said decisions, as they either resume the said legal position or sustain it, but do not go further. They held that a law made by a competent authority before the Constitution continues to be in force after the Constitution till it is altered or modified or repealed by the appropriate authority, even though it is beyond the legislative competence of the said authority under the Constitution. We give our full assent to the view and hold that a pre-Constitution law made by a competent authority, though it has lost its legislative competency under the Constitution, shall continue in force, provided the law does not contravene the “other provisions” of the Constitution.”

**72.** The Constitution Bench has held that the words “subject to the other provisions of the Constitution” should be given a reasonable interpretation. It has been held that the interpretation which would carry out the intention of the makers of the Constitution and also which is in accord with the constitutional practice in such matters, should be adopted. The Court held that Article 372 of the Constitution posits the continuation of the pre-existing laws made by a competent authority notwithstanding the repeal of Article 395 of the Constitution. It has been held that the expression “other” under Article 372 of the Constitution can only apply to the provisions other than those dealing with legislative competence. The Court therefore held that a pre-Constitution law made by a competent authority, though it has lost its legislative competency under the Constitution, shall continue in force, provided the law does not contravene the “other provisions” of the Constitution.

**73.** Another Constitution Bench of this Court in the case of ***Union of India and Another v. Tulsiram Patel***<sup>20</sup> also had an occasion to consider the said term which is also recorded

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<sup>20</sup> (1985) 3 SCC 398 : 1985 INSC 155

in Article 309 of the Constitution. The Court held thus:

**“106.** It is not possible to accept this submission. The opening words of Article 309 make that article expressly “Subject to the provisions of this Constitution”. Rules made under the proviso to Article 309 or under Acts referable to that article must, therefore, be made subject to the provisions of the Constitution if they are to be valid. Article 310(1) which embodies the pleasure doctrine is a provision contained in the Constitution. Therefore, rules made under the proviso to Article 309 or under Acts referable to that article are subject to Article 310(1). By the opening words of Article 310(1) the pleasure doctrine contained therein operates “Except as expressly provided by this Constitution”. Article 311 is an express provision of the Constitution. Therefore, rules made under the proviso to Article 309 or under Acts referable to Article 309 would be subject both to Article 310(1) & Article 311.....”

**74.** This Court held that, in view of the said term “subject to the provisions of this Constitution”, rules made under the proviso to Article 309 must be made subject to the provisions of this Constitution if they are to be valid. The Constitution Bench held that the rules made under the proviso to Article 309 or under Acts referable to that article are subject to Articles 310(1) and 311 of the Constitution.

**75.** In our opinion, Article 131 of the Constitution is a special provision which deals with the original jurisdiction of this Court in case of a dispute between the Federal

Government and the State Governments. It provides for a special jurisdiction to this Court to decide any question on which the existence or extent of a legal right depends. Any dispute either between the Government of India and one or more States; or between the Government of India and any State or States on one side and one or more other States on the other; or between two or more States which involve a question on which the existence or extent of a legal right depends are covered by this provision. A special provision has been made for deciding the question on which the existence or extent of a legal right between the special parties mentioned therein has been provided. Therefore, the words “subject to the provisions of this Constitution” will have to be considered in that context. The jurisdiction under Article 131 of the Constitution would only be subject to any other provision in the Constitution which provides for entertaining a dispute between the parties mentioned therein. We could notice only one such other provision in the Constitution, which is Article 262, which reads thus:

**“262. Adjudication of disputes relating to waters of inter-State rivers or river valleys.—(1)** Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use,

distribution or control of the waters of, or in, any inter-State river or river valley.

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).”

**76.** Article 262 of the Constitution deals with adjudication of disputes relating to waters of inter-State rivers or river valleys. It provides that the Parliament may by law provide for the adjudication of such disputes or complaints excluding the jurisdiction of all courts including this Court. As such, ordinarily a dispute with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley between two States could have fallen under Article 131 of the Constitution but because of the words “subject to the provisions of this Constitution” used therein and in view of Article 262, such a dispute would not be entertainable under Article 131 of the Constitution.

**77.** Article 32 of the Constitution provides for remedy for enforcement of rights conferred by Part-III of the Constitution whereas Article 136 provides for remedy by way of special leave to appeal before this Court. These are the general

remedies available to “any party”. Merely because, in any of the proceedings initiated under Article 32 or Article 136 or even Article 226 of the Constitution, one of the parties is common, in our view, the pendency of such proceedings would not come in the way of a specific party mentioned in Article 131 of the Constitution to take recourse to the remedy available therein. As already discussed hereinabove, a remedy under Article 131 of the Constitution is a special remedy available only to the parties mentioned therein and for the purposes mentioned therein. In our view, therefore, the interpretation as placed by the defendant - Union of India would not be in consonance with the constitutional scheme and as such, is liable to be rejected.

***e. Suppression of material fact:***

**78.** The Union of India has also pressed that the present suit is liable to be dismissed on the ground of suppression of material facts. It is argued that many of the FIRs mentioned in the plaint are registered under the directions of the High Court under Article 226 of the Constitution. It is submitted that this fact is suppressed by the plaintiff and as such, the plaint is liable to be rejected on this ground.

**79.** No doubt that material suppression of fact would entail a plaint to be rejected. However, a very reading of the plaint including the prayer clause and specifically paragraph 13 of the plaint would reveal that the claim of the petitioner is with regard to the investigations except with respect to the FIRs registered under the order of competent court of law. In that view of the matter, we find that the contention in that respect is also liable to be rejected.

***f. Cause of action of the suit:***

**80.** The next contention is with regard to non-disclosure of cause of action against the defendant. We have hereinabove extensively reproduced the averments made in the plaint. At the cost of repetition, it is only the averments in the plaint which can be gone into for considering as to whether the cause of action against the defendant arises or not.

**81.** The main case of the plaintiff as could be gathered from the averments in the plaint is that, before the provisions of DSPE Act can be invoked to authorize the CBI to exercise its powers and jurisdiction within any State, the following conditions are necessary:

- i) “A notification must be issued by the Central Government specifying the offences to be investigated by CBI (Section 3);
- ii) An order must be passed by the Central Government extending power and jurisdiction of CBI to any area (including railway area) in a State not being an Union Territory in respect of offences specified under Section 3 (Section 5); and
- iii) Consent of the State Government must be obtained for the exercise of power by CBI in the concerned State (Section 6).”

**82.** It is the case of the plaintiff that unless the three conditions under Sections 3, 5 and 6 of the DSPE Act are fulfilled, the CBI cannot exercise its powers in any State. It is the case of the plaintiff that after withdrawal of the consent by the plaintiff on 16<sup>th</sup> November 2018, the CBI could not have continued to register cases and exercise its powers under the DSPE Act. It is the plaintiff’s case that continuation of the registration of cases and exercise of powers after withdrawal of the consent is an act of constitutional overreach.

**83.** As already discussed hereinabove, the averments in the plaint cannot be read in isolation but are to be read in entirety. It is the case of the plaintiff that the CBI is



established by the defendant, its exercise of powers is controlled by the defendant and its functioning is also under the superintendence of the defendant. Therefore, it cannot be said that the plaintiff has not made out any cause of action against the defendant. As has been held by Their Lordships Justice Chandrachud and Justice Bhagwati in the case of ***State of Rajasthan and Others v. Union of India and Others*** (supra), the legal right of the States could be sought to be indicated in the suits. In the said case, the Court has disapproved the observations made by five-Judges Bench in the case of ***State of Bihar v. Union of India and Another*** (supra) that the legal right which is the subject of dispute must arise in the context of the Constitution and federalism itself. As has been held by this Court in the case of ***State of Rajasthan and Others v. Union of India and Others*** (supra), the legal right of the States consists in their immunity, in the sense of freedom from the power of the Union Government. Therefore, in light of DSPE Act and the judgments of this Court, even this contention is liable to be rejected.

**VII. CONCLUSION:**

**84.** We find that, in the present suit, the plaintiff is raising the legal issue as to whether after withdrawal of the consent under Section 6 of the DSPE Act, the CBI via the defendant – Union of India can continue to register and investigate cases in its area in violation of the provisions of Section 6 of the DSPE Act. The same has been sought to be attacked by the defendant – Union of India by raising various contentions challenging the maintainability of the suit. In our considered opinion, the contentions raised by the defendant, do not merit acceptance and for the reasons given hereinbefore, are rejected. The preliminary objection is, therefore, rejected. However, we clarify that the aforesaid findings are for the purposes of deciding preliminary objection and will have no bearing on merits of the suit. The suit shall proceed in accordance with law on its own merits.

**85.** List the suit on 13<sup>th</sup> August, 2024 for framing of issues.

.....**J.**  
**[B.R. GAVAI]**

.....**J.**  
**[SANDEEP MEHTA]**

**NEW DELHI;**  
**JULY 10, 2024.**