



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 29<sup>TH</sup> DAY OF AUGUST, 2024**

**PRESENT**

**THE HON'BLE MR JUSTICE K.SOMASHEKAR**

**AND**

**THE HON'BLE MR JUSTICE UMESH M ADIGA**

**WRIT PETITION NO. 27220 OF 2023 (GM-RES)**

**CONNECTED WITH**

**WRIT PETITION NO.670 OF 2024 (GM-RES)**

**IN W.P.27220/2023**

**BETWEEN:**

SRI. BASANAGOUDA R PATIL (YATNAL)  
S/O RAMANAGOUDA B PATIL  
AGED ABOUT 59 YEARS  
OCC MLA, VIJAYAPURA CONSTITUENCY  
R/AT OLD IB, STATION ROAD  
VIJAYAPURA 586101, KARNATAKA.

...PETITIONER

(BY SRI. DALWAI VENKATESH - ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
THE DEPUTY SECRETARY TO GOVERNMENT  
HOME DEPARTMENT (CRIMES, PRISONS & CINEMA)  
VIKAS SOUDHA, BENGALURU 560001.
2. CENTRAL BUREAU OF INVESTIGATION  
ANTI CORRUPTION BUREAU  
NO 36, BELLARY ROAD  
GANGANAGAR, BENGALURU 560032  
REP. BY ITS SUPERINTENDENT OF POLICE
3. SRI D K SHIVAKUMAR  
S/O S K KEMPEGOWDA  
AGE 60 YEARS, OCC:MLA

ADD: NO 252, 18<sup>TH</sup> CROSS  
SADSASHIVA NAGAR  
BENGALURU 560080.

4. THE ADDL. DIRECTOR GENERAL OF POLICE  
KARNATAKA LOKAYUKTA  
M S BUILDING, BANGALORE-01.

...RESPONDENTS

(BY SRI. KAPIL SIBAL - SR. COUNSEL A/W SRI K. SHASHIKIRAN SHETTY - AG A/W SMT. MAMATHA SHETTY - AGA, SRI. JAGADEESHA B N - ADDL. SPP, SRI. ISMAIL ZABIULLA - AAG, SRI. ADIT S PUJARI- ADVOCATE AND SRI. RACHEL RAJU ALICE - ADVOCATE FOR RESPONDENT NO.1; SRI. P PRASANNA KUMAR - ADVOCATE FOR RESPONDENT NO.2; DR. ABHISHEK SINGHVI - SR. COUNSEL AND SRI. UDAY HOLLA - SR. COUNSEL ALONG WITH SRI. MAYANK JAIN-ADVOCATE, MADHUR JAIN - ADVOCATE, ARPIT GOWL - ADVOCATE AND SIDHARTH SEIM - ADVOCATE FOR SRI. VIVEK HOLLA - ADVOCATE FOR RESPONDENT NO.3; SRI. VENKATESH S. ARABATTI - SPL. COUNSEL FOR RESPONDENT NO.4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO; A) DECLARE THAT THE IMPUGNED ORDER DATED 28.11.2023 VIDE G O NO.HD4COD 2023 PASSED BY THE RESPONDENT NO.1 VIDE ANNEXURE-D AS VOID AND NON-EST IN LAW AND CONSEQUENTLY QUASH THE SAME ; B) DIRECT RESPONDENT NO.2 TO INVESTIGATE AND SUBMIT FINAL REPORT IN CBI/ACB/BLR RC 10(A) 2020 VIDE ANNEXURE-A; C) ISSUE DIRECTION UNDER SECTION 483 OF CODE OF CRIMINAL PROCEDURE TO LEARNED 21<sup>ST</sup> ADDL. CITY CIVIL AND SESSIONS AND SPECIAL JUDGE, FOR CBI CASES JUDGE; AND D) QUASH THE ORDER DATED 22.12.2023 ISSUED BY THE RESPONDENT NO.1 IN HD4COD 2023 DATED 22.12.2023 VIDE ANNEXURE-F.

**IN W.P.670/2024**

**BETWEEN:**

CENTRAL BUREAU OF INVESTIGATION  
(ANTI CORRUPTION BUREAU)  
OFFICE AT NO.36, BELLARY ROAD

GANGANAGAR, BENGALURU 560032.  
REP. BY THE CHIEF INVESTIGATION OFFICER  
SRI ANANDAKRISHNAN T.P  
ADDL., SUPERINTENDENT OF POLICE  
CENTRAL BUREAU OF INVESTIGATION  
AT ANTI CORRUPTION BUREAU  
BENGALURU 560032.

...PETITIONER

(BY SRI. P PRASANNA KUMAR - ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
REP BY ITS CHIEF SECRETARY  
ROOM NO320, 3<sup>RD</sup> FLOOR  
VIDHANA SOUDHA  
BENGALURU 560001.
2. THE SECRETARY  
HOME DEPARTMENT  
ROOM NO.222  
II FLOOR, VIDHANA SOUDHA  
BENGALRU 560001.
3. THE UNDER SECRETARY TO GOVERNMENT  
HOME DEPARTMENT (CRIMES)  
II FLOOR, VIDHANA SOUDHA  
BENGALURU 560001.
4. DEPUTY SECRETARY TO GOVERNMENT  
HOME DEPARTMENT  
(CRIMES, PRISONS AND CINEMA)  
II FLOOR, VIDHANA SOUDHA  
BENGALURU 560001.
5. KARNATAKA LOKAYUKTHA  
BENGALURU CITY  
REP BY ITS SUPERINTENDENT OF POLICE  
MS BUILDING  
BENGALURU 560001.
6. SRI. D K SHIVAKUMAR  
S/O S K KEMPE GOWDA

AGED 60 YEARS  
MEMBER OF LEGISLATIVE ASSEMBLY  
& DEPUTY CHIEF MINISTER  
STATE OF KARNATAKA  
R/AT NO.252, 18<sup>TH</sup> CROSS  
SADASHIVANAGAR  
BENGALURU 560080.

...RESPONDENTS

(BY SRI. KAPIL SIBAL - SR. COUNSEL A/W SRI K. SHASHIKIRAN SHETTY - AG A/W SMT. MAMATHA SHETTY - AGA, SRI. JAGADEESHA B N - ADDL. SPP, SRI. ISMAIL ZABIULLA - AAG, SRI. ADIT S PUJARI- ADVOCATE AND SRI. RACHEL RAJU ALICE - ADVOCATE FOR RESPONDENTS NO.1 TO 4; SRI. VENKATESH S. ARABATTI - SPL. COUNSEL FOR RESPONDENT NO.5; DR. ABHISHEK SINGHVI - SR. COUNSEL AND SRI. UDAYA HOLLA - SR. COUNSEL ALONG WITH SRI. MAYANK JAIN - ADVOCATE, MADHUR JAIN - ADVOCATE, ARPIT GOEL - ADVOCATE AND SIDHARTH SEIM - ADVOCATE FOR SRI. VIVEK HOLLA - ADVOCATE FOR RESPONDENT NO.6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO; QUASH THE IMPUGNED GOVERNMENT ORDER DTD 28.11.2023 VIDE GO.NO.HD4COD 2023, BENGALURU PASSED BY THE R4 / DEPUTY SECRETARY (PRODUCED VIDE ANNEXURE-M TO THE WRIT PETITION) AND QUASH THE IMPUGNED GOVERNMENT ORDER DTD 22.12.2023 VIDE GO.NO.HD4COD 2023, BENGALURU AND ITS CORRIGENDUM DTD 26.12.2023 VIDE GO NO.HD4COD 2023, BENGALURU PASSED BY THE R3 / UNDER SECRETARY (PRODUCED VIDE ANNEXURE-P AND Q TO THE WRIT PETITION)

THESE WRIT PETITIONS, HAVING BEEN FURTHER HEARD AND RESERVED FOR JUDGMENT ON 12.08.2024 COMING ON FOR PRONOUNCEMENT THIS DAY, **K. SOMASHEKAR . J.**, MADE THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE K.SOMASHEKAR  
AND  
HON'BLE MR JUSTICE UMESH M ADIGA

**CAV ORDER**

(PER: HON'BLE MR JUSTICE K.SOMASHEKAR)

As common questions of law and facts arise for consideration in both these petitions, they are heard together and are disposed of by this common order.

2. The petition in W.P.No.27220/2023 is filed by one Sri Basanagouda R. Patil (Yatnal), praying to declare the impugned order dated 28.11.2023 vide GO No.HD4COD 2023 passed by State Government produced at Annexure- "D" as void and non-est and consequently to quash the same; further, for issue of a writ of mandamus to direct Central Bureau of Investigation to investigate and submit a final report; to quash the order dated 22.12.2023 issued by State Government in HD 4 COD 2023 at Annexure-"F" and such other reliefs.

3. The petition in W.P.No.670/2024 has been preferred by the Central Bureau of Investigation against the respondents, arraigning one Shri D.K. Shivakumar as Respondent No.6, praying to issue an order in the nature of certiorari quashing the impugned Government Order dated 28.11.2023 vide G.O.No.HD4COD 2023, Bengaluru,

passed by the 4<sup>th</sup> respondent / Deputy Secretary (produced as Annexure-"M" to the writ petition) and also for issue of a writ of certiorari quashing the impugned Government Order dated 28.11.2023 vide GO No.HD4COD 2023, Bengaluru and its Corrigendum dated 26.12.2023 vide GO No.HD4COD 2023, Bengaluru, passed by the 3<sup>rd</sup> respondent / Under Secretary (produced as Annexures "P" and "Q" to the said writ petition).

4. We have heard the learned Senior Counsel Shri Kapil Sibal and the learned Advocate General Shri K. Shashi Kiran Shetty appearing on behalf of Respondent No.1 / State in W.P.No.27220/2023 and for Respondent Nos.1 to 4 / State in the connected petition in W.P.No.670/2024. Further, we have heard the learned Senior Counsel Dr. Abhishek Singhvi appearing on behalf of Respondent No.3 in W.P.No.27220/2023 and for Respondent No.6 in W.P.No.670/2024, namely, Sri. D.K. Shivakumar. Further, we have heard the arguments of Learned counsel Shri. Venkatesh P. Dalwai for the petitioner in W.P.No.27220/2023, namely,

Shri. Basanagouda R. Patil (Yatnal), learned counsel Shri Venkatesh S. Arabatti for Karnataka-Lokayukta / Respondent No.4 in W.P.No.27220/2023 and for Respondent No.5 in W.P.No.670/2024 as well as the learned Spl. PP. Shri P. Prasanna Kumar for the CBI in both the petitions and perused the entire material on record.

5. In a nutshell, these petitions have been filed challenging the withdrawal of consent for an investigation against Shri D.K. Shivakumar / respective respondent in both the petitions. The investigation pertains to a case registered under the Prevention of Money Laundering Act, 2002, following an income tax search conducted on 02.08.2017 that revealed a significant amount of unaccounted cash.

6. It transpires from the facts of the cases that the respective respondent in both the petitions namely Shri D.K. Shivakumar, the Deputy Chief Minister and President of the Karnataka Pradesh Congress Party, was subjected to an Income Tax Department search on August 2, 2017.

During the search, Income Tax officials are said to have recovered Rs.8,59,69,100/-, including Rs. 41.00 lakhs from various premises. Consequently, a case was filed against the said respondent under the Income Tax Act, 1961, before the Special Court for Economic Offences. The Directorate of Enforcement (ED) also registered a case (ECIR/HQ/4/2018). On September 9, 2019, the ED sent a letter to the Karnataka State Government under Section 66(2) of the Prevention of Money Laundering Act, 2002, seeking consent for investigation. The State Government consented on September 25, 2019, leading to the registration of an FIR against the said respondent. Against the FIR, the said respondent filed Writ Petition No. 10479/2020 to quash the order, but the same was dismissed on April 20, 2023. Subsequently, a writ appeal in WA No. 646/2023 was filed. During the pendency of the writ appeal, it was reported on November 24, 2023, that the State Cabinet had withdrawn the consent for investigation against Shri D.K. Shivakumar, under Section 6 of the DSPE Act, 1946.



7. The petitioner Shri Basanagouda R. Patil (Yatnal) filed an intervening application in the writ appeal, arguing that the withdrawal of consent was arbitrary, malafide, and against public interest, citing the Supreme Court's decision in KaziDorji vs. State of Sikkim. The High Court allowed the said respondent to withdraw both the writ appeal and the writ petition. The petitioner / Yatnal, claiming locus-standi based on involvement as an intervenor in WA No. 646/2023, argues that the withdrawal of consent is unlawful and interferes with ongoing investigations and judicial proceedings. Despite a defamation suit filed by the said respondent in 2019, the petitioner contends it does not hinder the legal challenge against the withdrawal of consent. The petitioner asserts that the withdrawal of consent is tailored to benefit of the said respondent and is tainted with malafides, and constitutes interference with an ongoing investigation. The petitioner seeks a declaration that the withdrawal of consent is void and that the investigation should continue unaffected, hence this writ petition in W.P.No.27220/2023.

8. The learned Advocate Shri Venkatesh P.Dalwai appearing for the petitioner in W.P 27220/2023 claims that, locus standi to challenge the impugned order as an intervening applicant in W.A. No. 646/2023, having been heard on merits regarding the withdrawal of consent for investigation by State Government, the petitioner argues that State Government violated Articles 141 and 144 of the Indian Constitution.

9. The Advocate for the petitioner further states that, Respondent No. 2 in W.P 27220/2023 / CBI, after registering an FIR under Section 13(1)(e) of the PC Act 1988 against Respondent No. 3 in W.P No.27220/2023, conducted part of the investigation. The alleged offence involves amassing wealth disproportionate to known sources of income, a serious charge for a public servant. The petitioner argues that the hasty withdrawal of consent for Respondent No. 3 in W.P 27220/2023, Deputy Chief Minister of Karnataka, indicates bias and illegalities that warrant this Hon'ble High Court's intervention.

10. The petitioner Advocate in W.P 27220/2023 further argues that, criminal law for cognizable offences can be initiated by any person, even if not personally injured or aggrieved, under Section 154 CrPC or by invoking the Learned Magistrate under Section 200 CrPC. A de facto complainant can challenge adverse orders in higher courts, even if not personally aggrieved, to prevent the stifling of prosecution.

11. The petitioner Advocate further states that, due to State Government's action, they cannot file a complaint or invoke jurisdiction under Section 200 Cr.P.C, as the FIR is registered and the matter is pending before the Trial Court, as consequence when prosecution is stifled by State Government, the only recourse is to approach the High Court in pursuance of the same and submits that, this Court, being the designated court for cases involving MPs/MLAs, is the appropriate forum for this writ petition.

12. The petitioner argues that the principles set by the Apex Court regarding the withdrawal of prosecution under Section 321 Cr.P.C. should apply to the impugned

action, confirming the petitioner's *locus standi* to challenge it. The petitioner in W.P.27220/2023 asserts their right to challenge the withdrawal of consent for investigation by the State Government, claiming *locus standi* as an intervening applicant in W.A. No. 646/2023 having been heard on merits regarding the withdrawal of consent for investigation by the State Government. The petitioner argues that Respondent No. 1 / State has violated Articles 141 and 144 of the Indian Constitution which particularly concerning Respondent No. 3 in W.P 27220/2023 indicates bias and illegalities.

13. The petitioner emphasizes and submits that, though they have a right to initiate criminal law proceedings, even without personal injury, they are unable to do so due to the pending FIR. They argue that they should not be treated differently from a de facto complainant and that the High Court is the appropriate forum for this case due to the involvement of an MLA.

14. The petitioner highlights their duty to expose the abuse of power by the State Government and argues that

the principles set by the Apex Court for withdrawal of prosecution should apply, confirming their *locus standi* to challenge the impugned action. These are the contentions advanced by the learned counsel Shri Venkatesh P. Dalwai, for the petitioner / Basanagouda R. Patil (Yatnal), in W.P.No.27220/2023. Further, Shri Dalwai, has relied on the following citations, in support of his submissions:

- i) W P No 8316/2020 (S-Res) dated 22-7-2020
- ii) PSR Sadhanatham V/s Arunachalam; 1980 (3) SCC Page 141 (Para 13 to 16)
- iii) A R Antulay V/s Ramdas Srinivas; AIR 1984 SC 718
- iv) V S Achutanandan V/s R Balakrishna Pillai; 1994 (4) S C C 299
- v) Manohar Lal V/s Vinesh; 2001 (5) SCC 407
- vi) Manzoor Ali Khan V/s Union of India;- 2015(2) S C C. 33
- vii) Abdul Wahab V/s State of Kerala; AIR 2018 SC 4265
- viii) Kazi Lhendup Dorji V/s CBI; -1994 Supp SCC 116
- ix) K Chandrashekar V/s CBI; AIR 1998 SC 2001.

15. It is the further contention of the Shri Venkatesh P. Dalwai, learned counsel for the petitioner / Yatnal, in W.P.No.27220/2023 by way of his further synopsis filed on 02.08.2024 that, Respondent No.3 / Shri D.K. Shivakumar, had challenged the registration of FIR and

investigation by the CBI in W.P.No.15251/2022. The learned Single Judge of this Court, by order dated 19.10.2023, has dismissed the said petition and thereby permitted the CBI to continue the investigation. The said order was challenged by the said Respondent No.3 before the Hon'ble Apex Court in SLP (Criminal) Diary No.47121/2023. The Hon'ble Apex Court, by its order dated 14.07.2024, has dismissed the said SLP, which order has been produced as Document No.1. It is the contention of Shri Venkatesh P. Dalwai for the petitioner in W.P.No.27220/2023 that, the resultant effect of the judgment of the Hon'ble Apex Court is that the order of the learned Single Judge in allowing the investigation by the CBI, has been merged with the order in SLP. Hence, the CBI will have to be allowed to complete the investigation and to file an appropriate report in the Court.

16. He further submits that Article 131 of the Constitution of India deals with original jurisdiction of the Supreme Court and clauses (a), (b) and (c) clearly specify that the applicability is valid only in disputes between the

States, Union of India on either side. It is his contention that the said constitutional bar does not apply to the present dispute as in these writ petitions, as there are private parties in the present writ petitions. This view is supported by the judgment of the Hon'ble Apex Court in the case of **STATE OF BIHAR vs. UNION OF INDIA ((1970 (1) SCC 67))**.

17. Learned counsel Shri Venkatesh P. Dalwai further submits that Section 6 of the DSPE Act requires the consent of the State Government for the CBI to exercise its powers and jurisdiction within that State. This means that, even though Section 5 allows the Central Government to extend the DSPE's powers to any area, the actual exercise of these powers within a State, depends on the State's consent as per Section 6 of the DSPE Act.

18. Further, Section 5 of the DSPE Act grants the Central Government the authority to extend the DSPE's jurisdiction, but Section 6 permission is mandatory since it begins with non-obstante clause. Hence, it is his contention that Section 6 consent / permission is

necessary to register the case within the State. However, once case was registered based on the consent, subsequent withdrawal will not affect ongoing investigation by the CBI but only prohibits any other fresh case being registered by it in future. Hence, it is submitted by the learned counsel Shri Venkatesh P. Dalwai that in the present case, withdrawal post registration and commencement of investigation will not affect the powers of the CBI under the DSPE Act.

19. Since the very foundation of withdrawal of consent order is contrary to law of the land, i.e., ratio laid down by Kazi Dorji case which is binding on all authorities under Article 144 of the Constitution of India and such FIR was registered during pendency of the writ petition, it has no sanctity in law. Hence, the learned counsel Shri Venkatesh P. Dalwai submits that the FIR has no independent legs to stand as the act of transfer of investigation is without jurisdiction and is nullity in the eye of law.



20. Whereas the learned SPP Shri P. Prasanna Kumar for the respondent in the aforesaid writ petition and also petitioner in the connected proceedings in W.P.No.670/2024 for the CBI has specifically contended relating to the 'general consent' and also 'specific consent' and their guidelines inclusive of the scope of Article 131 of the Constitution of India and so also the relevant provisions of the CVC Act, 2003 and he has argued in conformity with the arguments advanced by the learned counsel Shri Venkatesh Dalwai for the aforesaid petitioner and he submitted that the contentions of Shri Venkatesh P. Dalwai be considered even though he has submitted the written synopsis in terms of written arguments on the aforesaid aspects.

21. The Learned Special Counsel Shri P. Prasanna Kumar appearing for the Central Bureau of Investigation in both the petitions contends that, the State Government issued consent to the CBI under Section 6 of the DSPE Act on 25.09.2019, leading to the registration of FIR RC No. 10(A)/2020. When such being the case, the State

Government's subsequent withdrawal of consent during the on-going investigation, is illegal and without due process of law. Further, the Respondent / State's reliance on Section 21 of the General Clauses Act to justify their withdrawal, is misplaced. He submits that the Hon'ble Supreme Court in the case of ***Kazi Lhendup Dorji v. CBI (1994 Supp (2) SCC 116)***, examined the power to withdraw consent under Section 21 of the General Clauses Act concerning Section 6 of the DSPE Act. While the court did not definitively answer whether Section 21 could be invoked, it held that even if it were applicable, the withdrawal would have only prospective effect and would not impact the ongoing investigations.

22. Further, the learned Special Counsel Shri P. Prasanna Kumar highlights the Supreme Court's rulings in ***K. Chandrasekhar v. State of Kerela ((1998) 5 SCC 223)***, ***Common Cause v. Union of India ((2023) 10 SCC 321)***, and various High Court judgments, including ***Ramesh Chandra Singh v. CBI (2020 SCC online Cal 586)*** and ***Kotrappa Haldal v. State of Karnataka (AIR***

**1984 Kant 34**), which unequivocally state that withdrawal of consent does not affect pending investigations. Further, the CBI is obligated to complete the investigation and file its final report, regardless of any withdrawal. The State Government's actions in not only withdrawing consent but also transferring the investigation to the Karnataka Lokayuktha, is illegal and contrary to the Supreme Court's directives in the aforementioned cases. The question of whether Section 21 of the General Clauses Act applies to Section 6 of the DSPE Act, remains unresolved. However, the Supreme Court's stance in **Kazi Lhendup Dorji (1994 Supp (2) SCC 116)** makes it clear that this question is irrelevant to the effect of withdrawal of pending investigations. Once consent is given under Section 6 of the DSPE Act, the CBI must conclude the investigation, and withdrawal of consent cannot impede this process. It is contended that the transfer of the investigation to the Lokayuktha further raises concerns about potential interference and influence, jeopardizing the fairness and impartiality of the

investigation, especially considering the accused's high public office.

23. Per contra, Shri Venkatesh S. Arbatti, the learned Special counsel and Special Public Prosecutor for the Karnataka Lokayukta appears and advances his arguments on behalf of Respondent No.5 in W.P 670/2024 /Karnataka Lokayukta. He contends that the Petitioners have challenged the Government orders dated 28.11.2023 and 26.12.2023, respectively, which directed the transfer of the case (FIR No. CBI/ACB/BLR/2020 RC(10A)/2020) to the Karnataka Lokayukta. Acting upon these orders, a new FIR in (Crime No. 13/2024) came to be registered under Section 13(1)(b) read with Section 13(2) of the PC Act on 08.02.2024 and the investigation has been taken up by the DySP-3, Bengaluru City Division, Karnataka Lokayukta, and significant progress has been made, including the collection of material evidence. He further contends that the Lokayukta has jurisdiction to investigate the case as per the Government Orders and has taken appropriate steps in accordance with the law.

24. In essence, learned Special Counsel for Respondent No. 5 / Karnataka Lokayukta argues that, the transfer of the investigation from the CBI to the Lokayukta was legally authorized by the Government orders, based on which the Lokayukta has initiated and is actively pursuing the investigation into the matter for which jurisdiction has been established based on the Government order mentioned supra. Further, his submission is that the investigation is underway, and material evidence has been collected.

25. Learned Senior Advocate Mr. Kapil Sibal and the learned Advocate General Mr. Shashi Kiran Shetty, both appearing for Respondent Nos. 1 to 4 in WP. 670 / 2024 and for Respondent 1 in WP No. 27220 / 2023, contend that the consent granted on 25.09.2019 for CBI investigation is *void ab initio*, contrary to statute and guidelines, and tainted by political *mala fides*. Under the Delhi Special Police Establishment Act, 1946 ("DSPE Act"), the CBI can investigate within the territory of a State only if:

*“Section 3 Notification: Specifies the offences or classes of offences that the CBI is empowered to investigate.*

*Section 5 Notification: Extends the jurisdiction of the CBI beyond the Union Territories and into the specified States.*

*Section 6 Consent: The State provides consent for the CBI to investigate pursuant to notifications under Sections 3 and 5 of the DSPE Act”.*

26. In the case on hand, a notification under Section 5 of the DSPE Act was issued on 27.02.2020, after the State’s consent under Section 6 on 25.09.2019, making the consent procedurally invalid. Furthermore, the consent was issued on oral directions from the then Chief Minister, without awaiting the required opinion of the then Advocate General. Additionally, the consent was granted without the State registering an FIR and without demonstrating as to why the State police were inadequate to investigate the case. The checklist required by guidelines was issued only on 11.12.2019, three months after the consent was granted, indicating non-adherence to guidelines and

reliance on insufficient and non-cogent material for granting consent.

27. Learned Senior Counsel Shri Kapil Sibal further contends that the ED's letter dated 09.09.2019, which triggered the State's consent, was deficient under Section 66(2) of the PMLA. Section 66(2) permits sharing of information by the Director or authorized officer with the concerned agency for necessary action when there is an opinion based on "information" or "material in possession" that provisions of any other law are contravened. Further, the deficiencies in the letter were appraised to the Bench stating that, the letter is addressed to the Chief Secretary instead of the concerned agency and further, the letter did not specify which provisions of any other law were contravened and also the letter lacked any information or material demonstrating commission of an offence. It is further contended that without being in possession of details regarding assets or sources of income of the respondent No.6 in WP. No.670/2024, the Director or authorized officer could not have had either "information"

or "material" indicating the commission of an offence of disproportionate assets. The letter copied material related to purported offences under the Income Tax Act, without disclosing which specific provisions of the Prevention of Corruption Act were violated or the check period for disproportionate assets, violating Section 66(2) of the PMLA.

28. It is also contended that the State's actions upon receiving the ED's letter were inconsistent and irregular, such as The Chief Secretary forwarded the letter to the Chief Minister instead of the appropriate agency further upon which The Chief Minister unilaterally issued oral directions to grant consent without obtaining necessary legal opinions or internal guidelines and such consent was issued without justifying the need for CBI investigation or explaining why the State police were inadequate. Thus it is contended that the resultant actions violated the guidelines and procedures required for granting such consent, indicating procedural irregularities and lack of due process.



29. It is also contended that the ED's action in addressing a letter to the CBI on 02.09.2019 was illegal. According to the federal structure, information should have been shared with the State agency under Entry 80 List I and Entry 2 List II of the Seventh Schedule of the Constitution of India. The letter should have been addressed to the Government of India for information if a Central Government employee was involved, but investigation should always be conducted by the local police with territorial jurisdiction. The direct communication to the CBI indicates a predetermined decision to refer the matter to the CBI, bypassing proper channels.

30. It is the further contention of the learned Senior Counsel Shri Kapil Sibal that declaring the State's withdrawal of consent on 28.11.2023 as illegal, would undermine the federal structure. Allowing the CBI to intervene on Central Government directions whenever there is a political difference would violate the principle of state autonomy in investigations. This undermines the

primary responsibility of the State to ensure fair trial and investigation within its territory.

31. It is the further contention of the learned Senior Counsel that Reliance placed in the cases of Kazi Lhendup Dorji v. CBI and K. Chandrasekhar v. CBI is misplaced as these judgments do not address the validity of the consent order. It is contended that the case in Kazi Lhendup Dorji v. CBI: deals with the effect of revoking general consent and does not apply to specific consent cases. Further, the case in K. Chandrasekhar v. CBI: pertains to further investigation post charge-sheet and outlines reasons for transferring cases to the CBI, which do not apply to this case as the investigation had not been completed and no charge-sheet was filed.

32. It is his further contention that the State is within its power to declare the consent void due to procedural irregularities and malafide actions. This ensures fair investigation and upholds the State's authority in maintaining law and order. Declaring the consent void maintains the integrity of the federal structure and

ensures that State agencies are not overridden without due process and valid reasons.

33. In essence, The Respondent Nos.1 to 4 have challenged the validity of the consent granted to the CBI for investigation, citing procedural irregularities, statutory violations, and lack of adherence to guidelines. The ED's letter triggering the consent was deficient, and the State's actions were inconsistent and irregular. Additionally, the direct communication between the ED and CBI was illegal and bypassed proper channels. Declaring the State's withdrawal of consent as illegal would violate the federal structure and undermine its autonomy. The cited precedents are inapplicable, and the State has the authority to declare the consent void to ensure a fair investigation and to uphold its powers.

34. Learned Senior Counsel Dr. Abhishek Manu Singhvi and Mr. Udaya Holla both appearing for Shri D. K. Shivakumar / Respondent No. 6 in Writ Petition No. 670/2024 contend that the earlier Consent dated 25.09.2019 was void-ab-initio, in the light of violation of

Section 66(2) of PMLA, as Section 66(2) of PMLA mandates disclosure of information to the 'concerned agency,' based on the opinion of the Director or specified authority regarding contraventions of other laws.

35. In the instant case, information regarding the same was malafidely shared with the Chief Secretary of Karnataka and the Petitioner (CBI) on 09.09.2019, bypassing the jurisdictional police, which violate Section 66(2) of PMLA. The letter dated 09.09.2019 merely reproduces information from the Income Tax Department and does not disclose an offence under Section 13(1)(e) of the PC Act. The ED's case, which formed the basis for the CBI's case, was quashed by the Supreme Court on 05.03.2024. Additionally, the Respondent No. 6 has been discharged in three out of four prosecution complaints filed by the Income Tax Department, with a stay granted by the Supreme Court in the remaining case.

36. Furthermore, learned Senior Counsel Dr. Abhishek Manu Singhvi submits that, the previous consent was based solely on the oral opinion of the then Chief

Minister of Karnataka on 24.09.2019, indicating political motivation and does not to any stretch, accord justification for referring the case directly to the CBI without ascertaining the nature of the offence or the jurisdictional police's ability to investigate. Previous challenges by Shashi Kumar Shivanna were dismissed on the point of locus and are irrelevant to the present case and no specific reason was provided for singling out Respondent No. 6 while other cases were referred to the Lokayukta coupled with The DoPT guidelines for transferring cases to the CBI were not followed. In support of the same respondent No.6 places reliance in the case of ***State of West Bengal v. Committee for Protection of Democratic Rights, 2010 [(2010) 3 SCC 571]*** which states that, directly referring the case to the CBI contravenes the Supreme Court guidelines that prohibit routine or mechanical transfers to the CBI.

37. Further learned Senior Counsel submits that, the preliminary enquiry was unauthorized as it lacked sanction under Section 17A of PC Act, as CBI did not form an

opinion that the alleged acts of Respondent No. 6 were unrelated to recommendations or decisions taken in discharge of official duty resulting in the information shared by the ED on 09.09.2019 did not disclose a case of disproportionate assets and the Attorney General's legal opinion dated 25.09.2019 was ignored.

38. The learned Senior Counsel Dr. Abhishek Manu Singhvi contented that there was no application of mind or reasons recorded while granting consent to the CBI and places reliance's on such precedents namely,

- i) Mansukhil Vithaldas Chauhan v. State of Gujarat (1997) [1997 7 SCC 622],
- ii) M.P. Special Police Establishment v. State of M.P. (2004) [2004 8 SCC 788],
- iii) Kranti Associates (P) Ltd. v. Masood Ahmed Khan (2010) [2010 SCC 496],
- iv) State of Karnataka v. S. Subbegowda (2023) [2023 SCC online SC 911].

39. Learned Senior Counsel further argues that the very disclosure of information with CBI is in violation of federal structure; the State police should conduct preliminary enquiries and register FIRs upon receiving information about a cognizable offence as Entry 2 of list II

of the VII Schedule of the Constitution confers exclusive Jurisdiction on the State with regard to policy, and places reliance on ***Lalita Kumari v. Govt. of Uttar Pradesh, 2012 AIR 2012 SC 1515; State of West Bengal v. Committee for Protection of Democratic Rights, 2010(2010 3 SCC 571)*** to substantiate the same and after the consent withdrawal, CBI officers cease to be state police officers under Section 5 of the DSPE Act.

40. Further the learned Senior Counsel submits that, the withdrawal of the previous consent is covered under Section 21 of the General Clauses Act which includes Government's Power to Add, Amend, Vary, or Rescind Notifications, Orders, Rules, or Bye-laws and thus Section 21 empowers the State Government to withdraw previous orders, including illegal consents to the CBI.

41. Section 21 of the General Clauses Act applies to all Central Legislations, allowing the State to transfer investigations by rescinding previous orders (***Common Cause v. Union of India, 2023; Jai Prakash Singh Tomar v. State of U.P., 2001; Shree Sidhbali Steels***

***Ltd. v. State of U.P., 2011; Venkatesh Yeshwant Deshpande v. Emperor, 1938).***

42. Thus, Kazi's Judgment so relied upon, is not Applicable, as Kazi's case is fact-specific and does not establish a general principle. The Supreme Court did not address Section 21 of the General Clauses Act in Kazi's case.

43. Lastly learned Senior Counsel Dr. Abhishek Manu Singhvi submits that Writ Petition under Article 226 is not appropriate for disputes between Central and State, such disputes between the Central and State Governments should be addressed under Article 131 of the Constitution and not Article 226 and places reliance on such case laws ***State of Karnataka v. Union of India, 1977 [1997 4 SCC 608]; Chief Conservator of Forests, Govt. of AP v. Collector, 2003)[2003 3 SCC 472].***

44. Learned Senior Counsel submits that the earlier consent, dated 25.09.2019, was fundamentally flawed and thus void ab initio. This is due to a series of procedural



irregularities, including violations of the PMLA by bypassing jurisdictional authorities, and reliance on ED and IT cases that have since been weakened or overturned. Moreover, the consent was allegedly procured through undue political influence and lacked proper justification. The subsequent CBI preliminary enquiry was unauthorized, lacking the necessary sanction under Section 17A of the PC Act, and was initiated based on information that did not disclose a case of disproportionate assets, contrary to the Attorney General's legal opinion. The very grant of consent itself is argued to be arbitrary and illegal, devoid of reasoned justification and in violation of established administrative law principles. This entire process also bypassed the State police's jurisdiction, raising significant concerns regarding federalism principles.

45. However, the subsequent withdrawal of consent is asserted to be entirely legal, grounded on the provisions of Section 21 of the General Clauses Act. The Kazi case, often cited in such matters, is argued to be distinguishable on the facts and does not pose a legal barrier to the

withdrawal. Finally, the learned Senior Advocate contends that the appropriate forum for resolving this dispute lies not under Article 226, but rather under Article 131 of the Constitution, which governs disputes between the Central and State governments.

46. Further, the contentions of the Counsel for Respondents 1- 4 and 6 were countered by the CBI as such in W.P No. 670/2024 contending that, the Respondents present a multi-pronged challenge to the CBI's investigation and the withdrawal of consent, raising issues concerning the legality of the consent, procedural compliance, and the transfer of the investigation.

47. Learned Special Counsel Shri P. Prasanna Kumar for the CBI contends that the consent under Section 6 of the DSPE Act is non-est in law, invalid, and that it lacks proper application of mind, the same being issued after the Section 5 notification and having failed to specify the nature of the offence or address the necessity for sanction under Section 17A of the PC Act.

48. However, the learned Special Counsel for the CBI/Petitioner in W.P.No.670/2024, refutes these claims by highlighting that the consent order has already been challenged and upheld in previous writ petitions (W.P. No. 10479/2020 and W.P. No. 8316/2020). Furthermore, he has relied in the case of ***M. Balakrishna Reddy v. Director, CBI (2008) 4 SCC 409*** to emphasize that there is no specific format for issuing consent under Section 6 of the DSPE Act. It is also his contention that the Chief Minister's order, though not in writing, is valid and reflects proper application of mind. Additionally, it is contended that the ED's letter adequately identifies the offence under Section 13(1)(e) of the PC Act, for which sanction under Section 17A is not mandatory.

49. The Respondents' attempt to distinguish the ***Kazi Lhendup Dorji*** case is countered by the Petitioner/CBI, who asserts that the case is squarely applicable as there is no differentiation between general and specific consent under the DSPE Act.

50. The counsel for the Respondents / State claim that the information should have been sent to the State Police instead of the Chief Secretary and that the CBI investigation cannot proceed since the ED proceedings were quashed/stayed. However, the counsel for the Petitioner/CBI refutes these arguments, explaining that the Chief Secretary serves as the nodal officer for such communications. Moreover, a separate letter was sent to the CBI due to the involvement of a Central Government employee. The Petitioner/CBI cites the cases of ***Harish Fabiani v. ED 2022 SCC Online 3121***, ***Prakash Industries v. Union of India 2023 SCC online Del 336***, and ***V.P. Nanda Kumar v. ED 2023 SCC Online Ker 6848*** to establish that sharing information under Section 66(2) does not automatically constitute an offence and necessitates an independent investigation. Therefore, the outcome of the ED proceedings does not impact the CBI's independent probe.

51. The Respondents / State further argue that the CBI should not have registered an FIR before the State

Police and that the consent order does not specify the offences for transfer, relying on a CBI Manual pro forma and the case of ***State of W.B. v. Committee for Protection of Democratic Rights (2010) 3 SCC 571***.

However, the Petitioner/CBI counters these arguments by stating that there is no legal requirement for prior FIR registration by the State Police. They clarify that the CBI Manual pro forma is merely indicative, not legally binding. Additionally, they contend that the consent order sufficiently identifies the offence under Section 13(1)(e) of the PC Act, making the transfer of investigation valid. The Petitioner/CBI also argues that the reliance placed on ***State of W.B. v. Committee for Protection of Democratic Rights (2010) 3 SCC 571*** is misplaced, as it pertains to the powers of Constitutional Courts, not the State Government's authority under Section 6 of the DSPE Act.

52. In these writ petitions, the petitioner/CBI has facilitated documents namely Annexures-M,P,Q which are originals and Annexures-A,L,N and R which are true copies

of the originals. These documents have been produced in order to consider the issue in question. The document at annexure-A reveals that the Enforcement Directorate, Government of India addressed a letter to Shri Vijaya Bhaskar T.M, IAS, Chief Secretary to Government of Karnataka, Bengaluru, relating to sharing information under Section 66(2) of The Prevention Of Money Laundering Act, 2002 ("PMLA Act" for brevity) in case of Shri D.K Shivakumar and others. In pursuance of the prosecution complaint filed by the Income Tax Authority for the offences punishable under section 276C(1), 277, and 278 of the Income Tax act 1961 read with Sections 193, 199 and 120B of the Indian Penal Code, 1860, the investigation was taken up by the Enforcement Directorate under the provisions of the PMLA Act to unearth the proceeds of crime and for filing of consequent complaint under the Act. Paragraph No 3 of the said letter dated 09.09.2019 of the Enforcement Directorate states that the persons investigated have also violated the Provisions of Prevention Of Corruption Act as they have been/are working in the Government of Karnataka. Hence the same

is forwarded in furtherance of Section 66(2) of the PMLA Act, 2002. This office has also shared the same with CBI vide this office letter dated 02.09.2019(Annexure-B) and are requested to kindly take note of the above facts and take appropriate action in accordance with law.

53. Section 17 A of the PC Act 1988, reads thus:

“17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.—No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval—

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.]”

54. Further section 19 of the PC Act reads thus:

“19. Previous sanction necessary for prosecution.—(1) No court shall take cognizance of an offence punishable under 1 [sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction 2 [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]— (a) in the case of a person 3 [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;



(b) in the case of a person 3 [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office:

[Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless—

(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government

or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this subsection, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary."

55. A perusal of the aforesaid provision would reveal that section 19 is a bar for any court to take cognizance for prosecution of the offences under sections 7,11,13 and 15 unless the said sanction for prosecution is made available to the prosecuting agency by the Central Government or State Government, as the case may be.

56. In the instant case, it must be ascertained by the Investigating Agency as to what is the nature of the offences committed by the public servant concerned. If the alleged offence relates to any recommendation or decision taken by such public servant, only then issue under Section 17-A would arise.

57. Even earlier also there was a writ petition in WP No.8316 of 2020 filed by Shri Shashi Kumar Shivanna against the Government of Karnataka as the first respondent, Under Secretary to Government as the second Respondent and CBI as the third Respondent. The said petition was filed challenging the correctness of the consent accorded by the Government of Karnataka under Section 6 of the Delhi Special Police Establishment Act, 1946 ("DSPE Act" for brevity).

58. The Enforcement Directorate found that the petitioner being a co brother of Mr. D.K Shivakumar and officer grade employee of HAL, was involved in property transactions on behalf of Mr D.K Shivakumar. Hence the ED, after commencing the investigation forwarded its

report to Respondent No.1 by its letter dated 09.09.2019 in terms of 66(2) of the PMLA Act, 2002 for appropriate action. The ED then secured an opinion from Advocate General, who opined that sanction as contemplated under Section 17A of PC Act would arise only when a recommendation or decision taken by such public servant in discharge of his official function is in issue and that the sanction contemplated under section 19 of the PC act is to be obtained only after a charge sheet. The said writ petition came to be dismissed as being without merit. This issue has been addressed and also considered in the aforesaid writ petition and has been disposed of.

59. The learned Senior Counsels in the aforesaid writ petitions had taken various contentions and accordingly point that would arise for determination whether the petitioner has the locus to challenge the sanction granted by Respondent No.1 under Section 6 of DSPE Act. Whether the sanction granted under Section 6 of the DSPE act is akin to Section 17-A or 19 of PC act or under section 197 of Cr.PC. The aforesaid point which has been raised in the writ petition has been answered by referring to certain

judgments which are indicated therein. But it is not the point for consideration in these two writ petitions filed by the petitioners.

60. Annexure-E is the First Information Report under section 154 of the Cr.P.C. This document is also produced by the learned Special PP Shri Prasanna Kumar for CBI.

61. Annexure-F relates to proceedings in W.A No 444 of 2020 between the appellant namely Shashi Kumar Shivanna against Respondents 1-3. Keeping in view the submission made by the learned senior counsel for the appellant who more importantly submits that even though no FIR has been registered against the appellant, yet a search was conducted in the premises of the appellant by the CBI. He submits that the appellant be granted the liberty to take recourse to the remedy available to him, in case the appellant rates as accused in the FIR by CBI. Keeping in view the submission of the learned Senior Counsel in the aforesaid writ appeal, the same was disposed of.

62. Annexure-G is in respect of the order passed by the learned single Judge in WP No.10479 of 2020 dated 28.09.2020. This writ petition has been dealt in detail and the entire material available on record has been perused inclusive of the provision of Section 239/227 of the Cr.PC and so also Section 482 of Cr.PC as well as Articles 226 and 227 of the Constitution Of India. But the order passed in this writ petition indicates that the investigating officer examined so many witnesses collected voluminous documents, more than 84 witnesses and almost ending stage of investigation relating to registration of FIR.

63. Annexure-M is regarding entrustment of the case to the Central Bureau of Investigation vide G.O No. E-HD/40/COD/2019 dated 25.09.2019 which relates to the proceedings of the Government of Karnataka. The proceedings of The Government of Karnataka reveals that the cabinet observed the previous government has decided to hand over the case to CBI in a casual and hurried manner without assigning appropriate reasons and without application of mind and without consulting the relevant stake holders in the State. Overall, Cabinet

expressed that the legal requirements were not fulfilled before issuance of the said Government Order and therefore it is not in accordance with law. In view of the above reasons and in the background of the opinion of the Advocate General on 28.11.2023, the Cabinet has decided to withdraw the Government order dated 25.09.2019 as per Section 21 of the Karnataka General Clauses Act, 1899. At this juncture is relevant to refer to Section 6 of DSPE act which 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 3 [a State, not being a Union territory or railway area], without the consent of the Government of that State.”

64. It is also relevant to refer to Section 21 of The Karnataka General Clauses Act, 1897 which reads thus;

“21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.—Where, by any 1 [Central Act] or Regulations a power to 2 [issue notifications,] orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like

manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any 3 [notifications,] orders, rules or bye-laws so 4 [issued].”

65. Further it is relevant to extract Section 66[2] of the PMLA act which reads thus;

“(2) If the Director or other authority specified under sub-section (1y) is of the opinion, on the basis of information or material in his possession, that the provisions of any other law for the time being in force are contravened, then the Director or such other authority shall share the information with the concerned agency for necessary action.]”

66. Annexure-N relates to the proceedings in WA No.646 of 2023 dated 29.11.2023 challenging the order passed in WP No.10479/2020 seeking to set aside the order dated 20.04.2023 and further to quash the Government order dated 25.09.2019. Process having been served upon Respondent Nos. 1 and 2 in the aforesaid appeal, they entered appearance through the learned Additional Government Advocate and the CBI was represented by the learned special counsel Shri P Prasanna



Kumar. In the said appeal learned Senior Advocates Dr. Abhishek Manu Singhvi and Udaya Holla had moved a memo stating that in the light of the Government order dated 28.11.2023, the prayer in the writ petition has been rendered infructuous and hence the writ petition and writ appeal may be permitted to be withdrawn. Learned Counsel Shri P Prasanna Kumar for CBI and Learned Counsel Shri Venaktesh P Dalwai appearing for the intervener vide IA No.3 of 2023 had vehemently opposed the said memo seeking withdrawal by relying on several propositions. This court had observed that our Constitution recognizes the rule of continuity of Government, regardless of one political party replacing the other in the seat of power, owing to periodic elections. Hence this court had observed that the validity and efficacy of the subject FIR being kept miles away from their consideration the appeal itself being withdrawn accordingly this court had permitted the appellant to withdraw the said appeal.

67. However in the instant case the issues involved are between the petitioner in both the writ petitions against the Respondents and relating to Respondent No.3

in one writ petition and respondent No.6 in another writ petition. The same relates to proceedings initiated by recording an FIR as FIR No CBI/ACB/BLR/2020, RC-10[A2020] relating to investigation has been referred but when once FIR has been recorded under Section 154 of the Cr.P.C it is relevant to proceed further for investigation keeping in view the provision of section 161 of Cr.P.C which reads thus:

“161. Examination of witnesses by police.-

(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the

statement of each such person whose statement he records.

68. Further, Section 162 of the Cr.P.C reads thus:

“162. Statements to police not to be signed:  
Use of statements in evidence. -

(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872); or to affect the provisions of section 27 of that Act.

Explanation.- An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact."

69. Section 173 Cr.P.C relates to filing of a Charge-sheet against accused persons in the FIR recorded by the Investigating Agency. The relevant Section 173 Cr.P.C., reads thus:

"173. Report of police officer on completion of investigation.

x x x

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer-in-charge of the police station obtains further evidence, oral or

documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

70. Keeping in view the scope of section 154, it is also relevant to extract Section 167 Cr.P.C, which reads thus:

“167. Procedure when investigation cannot be completed in twenty-four hours.-

x x x

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

71. But the charge sheet ought to have been laid keeping in view the scope of Section 167 of Cr.P.C relating to the period for filing of a charge-sheet. But the FIR has been recorded by the CBI in the year 2020 and referred the said case for the purpose of investigation. The investigation has been carried by the Investigating Agency/CBI keeping in view the provisions of the IT act, 1961. Though FIR was recorded in the year 2020, considerable period has been taken by the concerned Investigating Agency but they have not concluded the investigation.

72. As regards CVC, the CVC operates as an independent statutory body under the Central Vigilance Commission Act, 2003, which ensures its autonomy from executive influence. The CVC is not under the control of any executive authority, ensuring unbiased functioning in its anti-corruption efforts. The CVC consists of the Central Vigilance Commissioner as the Chairperson and not more than two Vigilance Commissioners namely, Members. Their appointment is made by the President of India, based on the recommendations of a Committee. The said

Committee comprises of the Prime Minister as Chairperson and the Minister of Home Affairs and The Leader of the Opposition in the Lok Sabha as its Members. The CVC has the power of superintendence over the Central Bureau of Investigation (CBI) related to cases under the Prevention of Corruption Act, 1988. It ensures that the CBI follows proper procedures, but it cannot dictate specific actions or outcomes for individual cases, as specified in Section 8 clause (b). It is further stated that the CVC can refer cases to the CBI or other investigative agencies for a thorough and impartial investigation. It has the power to conduct its own inquiries or investigations into corruption cases, ensuring thorough and fair scrutiny. They submit an annual report to the President of India, detailing its activities, findings, and recommendations. This report is also laid before both Houses of the Parliament, ensuring transparency and accountability. Hence, under the scheme of the CVC Act, more foolproof mechanism is adopted by ensuring that corruption cases are dealt properly without bias by CBI under the supervision of CVC. Hence, under no circumstances, the State Government has

the power or jurisdiction to transfer the case from central agency to state agency.

73. It is also relevant to refer to the Seventh Schedule of the Indian Constitution which contains three lists that outlines the distribution of powers and functions between the Union and the States.

74. Entry 80 of List 1 of the Union List, states thus:

“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”.

75. Entry 2 of List 2 of the State List states thus:

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

76. The Learned Counsel Shri Venkatesh Dalwai for the petitioner in WP No.27220/2023 submitted that 90%



of the investigation has been completed by the Investigating Agency i.e. CBI after the case was entrusted to it. But there was no specific reason for referring the said proceedings to the CBI for further investigation. The CBI being the central Agency has proceeded with the matter keeping in view Section 6 of the DSPE Act, 1946. However, it is to be noted that firstly the matter was orally entrusted to the CBI for investigation. Even after entrusting the matter to the CBI, the CBI had not filed a final report.

77. Both the Learned Senior Counsel for the respective Respondents have taken us through almost all materials inclusive of the reliances stated supra. However the contentions advanced by Shri Venkatesh P Dalwai and Shri P Prasanna Kumar do not have any substance to proceed further. On the other hand, Learned Senior Counsel Shri Kapil Sibal for the State and Dr. Abhishek Manu Singhvi for Respondent Nos.3 & 6 in the respective petitions, have referred to various provisions relating to General Clauses act inclusive of PMLA Act, 2002 and so also Section 6 of DSPE act, 1946.

78. Learned Senior Counsel Shri Kapil Sibal and also the learned Senior Counsel Dr. Abhishek Manu Singhvi, have emphatically submitted keeping in view the aforesaid items in the Schedule mentioned above, that the CBI has not effectively made an endeavour to file the charge-sheet against the accused persons in the aforesaid crime before the court having jurisdiction to deal the matters.

79. As regards the offence under Section 120B of the IPC, 1860 relating to 'conspiracy', the said concept is an independent one lugged against the accused and the Enforcement Directorate has dwelled in as regards the same for investigation purposes.

80. In the instant case, the crime came to be registered in the year 2020 and thereafter the investigation has been taken up by the Investigating Agency, that is the CBI, but the investigation has not been completed well within the time stipulated under Section 167 of the Cr.P.C. Keeping in view the contentious contentions made by the learned Senior Counsel for the respective respondents, it is relevant to state that FIR No.

CBI/ACB/BLR/2020 RC(10A)/2020) was transferred to the Karnataka Lokayukta. Acting upon the order dated 28.11.2023 and 26.12.2023, a new FIR in Crime No. 13/2024 came to be registered under Section 13(1)(b) read with Section 13(2) of the PC Act on 08.02.2024. Subsequent to recording the FIR, the investigation was taken up by the DySP-3, Bengaluru City Division, Karnataka Lokayukta, and significant progress has been made, including the collection of material evidence according to the counsel's submission.

81. For the CBI to take up investigation within the boundaries of a State, requires prior consent of that State as per Section 6 of the DSPE Act. The Union Government can authorise the CBI to investigate such a crime in a State but only with the consent of the concerned State Government. The Supreme Court and High Courts, however, can order the CBI to investigate such a crime anywhere in the country without the consent of States.

82. From this it can be construed that there are 2 types of consent for an investigation by the CBI namely,

A) General Consent, when a state gives a general consent (Section 6 of the Delhi Special Police Establishment Act) to the CBI for probing a case, the agency is not required to seek fresh permission every time it enters that state in connection with investigation or for every case. A general consent is given to facilitate seamless investigation in a case of corruption or violence.

B) Specific Consent, when a general consent is withdrawn, CBI needs to seek case-wise consent for investigation from the concerned state government, and if specific consent is granted by concerned State government for a Particular case under Section 6 of DSPE Act.

83. Once a State withdraws consent, the CBI has to seek permission before it can register a case against a person or an entity based in that state. Thus, the CBI has to seek permission from the State government if it has to probe anyone residing in that State.

84. It is also relevant to refer to Article 131 of the Constitution of India, 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; (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, named 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.”

85. As regards maintainability of the petitions under Article 131 and as regards DSPE Act, it is relevant to refer to a recent pronouncement of the Hon'ble Apex Court in the case of ***THE STATE OF WEST BENGAL vs. UNION***

**OF INDIA (ORIGINAL SUIT No.4/2021).** In the said judgment, the Hon'ble Apex Court has held thus:

*"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."*

86. In the present cases, this court finds it pertinent to examine the precedent set in **State of West Bengal v. Union of India**, which firmly establishes the maintainability of suits under Article 131 of the Constitution of India when a dispute concerns the

existence or extent of a legal right between the Central Government and a State Government. The court in that case, affirmed that even if the legal right in question does not directly stem from the Constitution, the Supreme Court retains original jurisdiction to adjudicate such disputes.

87. These writ petitions raise complex questions regarding the interplay between the powers of the State and Central Governments in the context of CBI investigations. The petitioner challenges the State's withdrawal of consent for a CBI investigation into alleged offences under the Prevention of Corruption Act, 1988, against the Deputy Chief Minister of Karnataka, contending that the withdrawal is arbitrary, mala fide, and impedes the on-going investigation.

87. The respondents, including the State Government and the Deputy Chief Minister, argue that the initial consent granted to the CBI was *void ab initio* due to procedural irregularities and statutory violations. They

further assert that the State's withdrawal of consent is legally valid and within its powers.

88. The CBI maintains that the withdrawal of consent does not affect pending investigations and that it is obligated to complete the investigation and file its final report. The CBI disputes the respondents' claims regarding the invalidity of the initial consent and the alleged procedural irregularities.

89. In these matters, the core issue pertains to the jurisdiction of the Central Bureau of Investigation (CBI) to operate within a State's boundaries following the State Government's withdrawal of consent. This directly impacts the State's authority and control over its police force, a matter that is constitutionally significant. The dispute involves interpreting the Delhi Special Police Establishment (DSPE) Act in conjunction with the constitutional provisions regarding the division of powers between the Central Government and the State Government.



90. The Court, after carefully considering the arguments presented and the relevant legal provisions, notes that the dispute essentially involves a conflict between the State government and the CBI, which operates under the superintendence of the Central Government. The issues raised concern the interpretation of statutory provisions like the DSPE Act and the Prevention of Money Laundering Act (PMLA), and their relationship with constitutional provisions regarding the division of powers between the Central Government and the State Government.

91. Drawing upon the rationale established in the **State of West Bengal v. Union of India** case mentioned supra, this court finds that these writ petitions clearly fall within the ambit of Article 131 of the Constitution of India. The dispute involves a legal question concerning the extent of the Central Government's authority to deploy the CBI within a State, that has withdrawn its consent. The resolution of this dispute will directly impact the legal rights and jurisdiction of both the Central and State

Governments, making it a fit subject for adjudication under the Supreme Court's original jurisdiction as per Article 131 of the Constitution of India.

92. In light of these considerations, we hold that the present writ petitions are not maintainable. The dispute, at its core, is between the CBI, representing the Union Government, and the State Government. Such disputes, which involve questions about the extent of the Central Government's authority and the State's autonomy, are more appropriately addressed within the exclusive original jurisdiction of the Hon'ble Supreme Court under Article 131 of the Constitution of India.

93. Accordingly, the writ petitions are dismissed as not maintainable. However, the petitioners are granted liberty to pursue appropriate remedies before the Hon'ble Supreme Court under Article 131 of the Constitution of India.

94. Thus, both the writ petitions viz., W.P.No.27220/2023 and W.P.No.670/2024 are hereby dismissed as not maintainable.

Before parting with this judgment, this Court places on record its deep appreciation for the able research and assistance rendered by its Research Assistant-cum-Law Clerk, Mr.Pranav.K.B.

**Sd/-  
(K.SOMASHEKAR)  
JUDGE**

**Sd/-  
(UMESH M ADIGA)  
JUDGE**

KS