

A.F.R**Reserved**

Case :- CRIMINAL MISC. WRIT PETITION No. - 481 of 2023

Petitioner :- David Mario Denis

Respondent :- Union Of India Thru. Secy. Ministry Of
Personnel, Public Grievances And Pension And Others

Counsel for Petitioner :- Rajat Gangwar, Ashmita Singh

Counsel for Respondent :- A.S.G.I., Deepanshu Dass, G.A., Shiv
P. Shukla

Hon'ble Devendra Kumar Upadhyaya, J.

Hon'ble Narendra Kumar Johari, J.

(Per D. K. Upadhyaya, J.)

1. By instituting these proceedings under Article 226 of the Constitution of India the petitioner, who is the complainant/informant of the First Information Report bearing No.0310 of 2022 lodged on 29.10.2022 at Police Station-Indira Nagar, District-Lucknow, under sections 342, 386, 504, 506 of I.P.C. and section 7 of Prevention of Corruption Act (offences under sections 409, 411, 420, 467, 468, 471 & 120-B of I.P.C. and sections 7A, 8 and 13 of Prevention of Corruption Act have been subsequently added during course of investigation), assails the validity of consent accorded by the State of Uttar Pradesh under section 6 of Delhi Special Police Establishment Act, 1942 (hereinafter referred to as 'DSPE Act') by means of an order dated 29.12.2022 for investigation of the said F.I.R. by Central Bureau of Investigation (herein after referred to as 'the CBI').

The petitioner has also challenged the notification/order issued by the Government of India under section 5 of the DSPE

Act whereby the powers and jurisdiction of the members of Delhi Special Police Establishment have been extended to the whole of State of Uttar Pradesh for investigating into the F.I.R. No.0310 of 2022, dated 29.10.2022.

Another prayer made in this petition is that the State-respondents may be directed to get the investigation of the F.I.R. dated 29.10.2022 conducted by the Special Task Force, Uttar Pradesh.

Heard Shri Ajay Tiwari, learned Senior Advocate assisted by Shri Rajat Gangwar and Ms. Ashmita Singh, Advocates for the petitioner, Shri S. B. Pandey, learned Deputy Solicitor General of India, assisted by Shri Deepanshu Dass for the Union of India, Shri Kuldeep Pati Tripathi, learned Additional Government Advocate for the State of Uttar Pradesh and Shri Shiv P. Shukla, learned counsel representing the CBI. We have also perused the records available before us on this petition.

2. Before delving into the competing arguments made by the learned counsel representing the respective parties, it would be appropriate to note certain facts which have led to filing of the instant writ petition. On 29.10.2022 an F.I.R. bearing No.0310 of 2022 was lodged by the petitioner against two accused persons, (i) Vinay Pathak, the then Vice Chancellor, Dr. Bhimrao Ambedkar University, Agra (hereinafter referred to as 'University') and (ii) Ajay Mishra, the Proprietor of a Company known as XLICT. The allegations in the First Information Report as can be gathered from a perusal of the same are that the petitioner is the Managing Director of M/s DIGITEXT Technologies India Private Ltd. and has been executing certain works related to pre and post examination conducted by the

University since the year 2014-2015 and that certain bills of the petitioner were pending for the work said to have been executed by him for the academic years 2020-2021, 2021-2022. As per further recital made in the First Information Report, the petitioner made a request personally to the then Vice Chancellor of the University for clearing the pending bills on which the Vice Chancellor asked him to come to his residence at Kanpur University where he met the Vice Chancellor in the month of February, 2022 and was told that the Vice Chancellor gets 15% commission against the payment of bills and that he will pass the bills only once he is paid 15% amount as commission. The First Information Report further mentions that the petitioner was further told that if he did not make payment of the commission amount his company shall be removed from the works related to Agra University and other Universities as has been done in Kanpur University. The F.I.R. also states that the Vice Chancellor further told the petitioner that it is he who has been instrumental in appointment of the Vice Chancellors of eight Universities and that he had to pass on money to the top and that he threatened the petitioner on account of which he agreed to pay 15% bill amount as commission. In the F.I.R. it has further been recited that the Vice Chancellor thereafter gave him telephone number of the other accused person, Ajay Mishra and told him that after payment against the bills are made he should deliver the amount of commission to Ajay Mishra and it is only then that petitioner's company shall be engaged further. The petitioner in the F.I.R. further stated that the Vice Chancellor made the petitioner to speak to the other accused, Ajay Mishra through Apple Mobile and told him that the petitioner shall

contact him and further that he must tell the petitioner as to how the amount of commission was to be paid.

3. Further allegation in the F.I.R. is that the petitioner thereafter contacted the co-accused-Ajay Mishra who told him that the bills have been cleared by the Vice Chancellor and the amount has also been credited in his account and that he must now pay the commission. Petitioner further stated in the F.I.R. that he paid some amount to the co-accused, however, in the month of April, 2022 the Vice Chancellor again told the petitioner that he should meet Ajay Mishra and deliver the amount of commission and thereafter on the asking of the co-accused Ajay Mishra the petitioner transferred three amounts of Rs.51,62,500/-,Rs.11,80,000 and Rs.10,98,875/- through electronic mode in the bank account of another firm, namely, International Business Forms, Alwar, Rajsthan. The allegation in the F.I.R. further is that the petitioner paid the co-accused Ajay Mishra Rs.20 lakh and Rs.15,55,000 in cash. As per the F.I.R., on account of the fact that the petitioner failed to meet further demand of bribe, his company was disengaged and in place of his company the work was awarded to co-accused Ajay Mishra through UPDESCO.

4. On 29.10.2022 itself by means of an order passed by the Additional Director General of Police (Law and Order), Uttar Pradesh investigation of F.I.R. No.310 of 2022 was transferred to STF, Uttar Pradesh after seeking approval from the competent authority as is disclosed by the said order which has been annexed as annexure-5 to the writ petition.

5. The accused-Vinay Pathak instituted the proceedings of Crminal Misc. Writ Petition No.8079 of 2022 with the prayer to

quash the First Information Report dated 29.10.2022, however, the said writ petition was dismissed by this Court by means of an order dated 15.11.2022.

6. It has been submitted on behalf of the petitioner that the investigation of the F.I.R. was going on appropriately and the State of Uttar Pradesh while opposing the Criminal Misc. Writ Petition No.8079 of 2022 filed by the accused-Vinay Pathak for quashing of the First Information Report, in its counter affidavit had clearly stated that during course of investigation clinching evidence had been collected against the accused persons by the Investigating Agency, namely, Special Task Force which established their involvement in the reported crime. Various paragraphs of the counter affidavit filed by the State in Writ petition No.8079 of 2022 have been extracted in the writ petition and our attention has been drawn on behalf of the petitioner that the State in the proceedings of the said writ petition had clearly apprised this Court of the fact *inter alia* that investigation was being conducted by the Investigating Officer in a fair manner and that evidence collected and the recovery of money from the co-accused established the allegations made in the F.I.R. against the petitioner of the said writ petition (Vinay Pathak).

7. The investigation of the F.I.R. was being conducted by STF, Uttar Pradesh, however, the State Government vide order dated 29.12.2022 accorded its consent for extension of powers and jurisdiction of C.B.I. for investigation of F.I.R. dated 29.10.2022. On the aforesaid consent accorded by the State Government, the Central Government has extended the powers of C.B.I. to the whole of State of Uttar Pradesh for investigating the F.I.R. dated 29.10.2022 by passing/issuing an order/notification dated 06.01.2023. It is the consent order dated

29.12.2022 of the State Government under section 6 of DSPE Act and the order dated 06.01.2023 of the Government of India under section 5 of the said Act which have been challenged in these proceedings.

8. Shri Ajay Tiwari, learned counsel appearing for the petitioner has vehemently argued that once the STF, Uttar Pradesh was conducting the investigation of the F.I.R. appropriately, which fact was admitted by the State of Uttar Pradesh in the proceedings of Writ Petition No.8079 of 2022 filed by the accused, Vinay Pathak with the prayer to quash the F.I.R, there was no occasion for the State of Uttar Pradesh to have consented for transfer of investigation to the C.B.I.; neither was there any such occasion for the Government of India to extend the powers and jurisdiction of C.B.I. to investigate the F.I.R. It has been contended on behalf of the petitioner that the consent accorded by the State of Uttar Pradesh and the order passed by the Government of India whereby the investigation of the F.I.R. has been transferred from STF, Uttar Pradesh to C.B.I. are devoid of relevant material consideration and further that such an action on the part of the respondents does not have any rationale. He has further stated that the material available on record does not manifest any legally tenable reason for transferring the F.I.R. and in fact the impugned action on the part of the respondents is against the federal scheme of the Constitution.

9. Drawing our attention to Entry II of List 2 in the Seventh Schedule and entry 80, List I in the said the Schedule of the Constitution, it has been submitted by the learned counsel for the petitioner that the policing is a State subject and accordingly in a situation where the investigation of the F.I.R, which is lodged in

Lucknow and relates to certain transactions in connection with the payment of bills raised by the petitioner for executing certain works awarded to him by Agra University at Agra, was being conducted in right direction, transferring the investigation to C.B.I. without there being any legally tenable reason is absolutely arbitrary and hence the consent accorded for the said purpose by the State Government and the order passed by the Government of India in this regard are liable to be set aside. Certain other grounds have also been taken in the writ petition regarding the order dated 29.12.2022 of the State Government being in violation of Article 166 and the notification dated 06.01.2023 of Government of India in violation of Article 77 of the Constitution of India.

10. The argument challenging the impugned action on the part of the respondents has, however, been primarily premised on the ground that the impugned action is in fact a manifestation of colourable exercise of power for the reason that the power and jurisdiction of transferring the investigation of the F.I.R. in this case has not been exercised for the purpose for which it is available to the Government of India. The other ground taken, which has been emphasized on behalf of the petitioner, is that in absence of any cogent reason for transferring the investigation to the C.B.I. consent of the State Government has been accorded for the said purpose only with a view to extend unlawful benefit to the accused-persons and since the allegation against one of the accused, Vinay Pathak, who is the former Vice Chancellor of Agra University, is that he had told the petitioner that he had to give money to his superiors, as such the entire impugned exercise of transferring the investigation to C.B.I. has been

undertaken to stall, manipulate and derail the investigation with the connivance of the accused-Vinay Pathak.

11. Submission further on behalf of the petitioner is that it is only in rare and exceptional circumstances that any matter in respect of which jurisdiction is that of the State Government to investigate the F.I.R, should be transferred to the C.B.I. for investigation and that the State cannot have unbridled or unchanneled powers to grant its consent under section 5 of DSPE Act otherwise every day the federal structure of our Constitution shall be dented.

12. On behalf of the petitioner it has also been contended that the matter at hand since does not have any international or inter-State ramifications as such transfer of investigation in this case is unwarranted and legally not tenable. On the basis of the aforesaid submissions, it has been argued by Shri Tiwari, learned counsel representing the petitioner that the impugned consent of the State Government and the notification issued by the Government of India extending the powers and jurisdiction to the members of Delhi Special Police Establishment to investigate the F.I.R. deserves to be quashed and further that since the investigation of the F.I.R. was being conducted appropriately by the STF, Uttar Pradesh, a direction may be issued to the said Investigating Agency to conduct and conclude the investigation.

13. The prayers made in the writ petition have been opposed in unison by the learned counsel representing the Union of India, learned State Counsel and learned counsel representing the C.B.I. It has been submitted by Shri S. B. Pandey, learned counsel representing the Union of India that on 29.12.2022 a

reference was received from the Government of Uttar Pradesh for C.B.I. investigation of the F.I.R. which was made in the proforma prescribed for the said purpose as per the guidelines issued by the government of India, Department of Personnel and Training vide its letter dated 22.11.2018.

14. Drawing our attention to the said circular/letter dated 22.11.2018, it has been submitted on behalf of the Government of India that the said circular was issued for the purposes of introducing Single Window System in the Department of Personnel and Training for receiving proposals for C.B.I. investigation and according to the said circular, the State Governments for the said purpose are required to make the reference in a prescribed proforma which provides for furnishing the relevant information and documents so that appropriate decision on such reference may be taken by the Government of India. The said proforma enclosed with the circular dated 22.11.2018 issued by the Department of Personnel and Training, Government of India requires the State Government to furnish various informations and details and also justification for transferring any criminal matter to CBI for investigation which included information as to whether the matter has inter-State or transnational ramifications.

15. Shri Pandey has stated that reference made by the State Government was received which contained the requisite informations along with the consent as per the requirement of section 6 of DSPE Act. He has further stated that the justification for referring the matter to the C.B.I. as mentioned by the State Government in its reference to the Government of India was that the case has inter-state spread and ramification as out of two companies of accused, Ajay Mishra one i.e. XLICT is situated in

Lucknow, Uttar Pradesh and the other, SOLITAIRE PRINTOTECH is situated in Faridabad, Hariyana. It is also stated in the said reference that the company IBF of another co-accused Ajay Jain is located in Alwar, Rajsthan and that XLICT has been found to be printing question papers of Munger University, Bihar, CSJM University, Kanpur, Lucknow University, Jamsedpur Women's University, Khwaja Moinuddin Chisti Bhasa University, Lucknow, SGGU, Sarguja, Chattisgarh, MSU, Azamgarh, LNMMU, Darbhanga, Bihar without any authorization. Reference further stated that the actual contract was with Solitaire Printotech, Faridabad. It has been argued on behalf of the Union of India that the reference made by the State of U.P. was forwarded to the C.B.I. by the Government of India vide letter dated 05.01.2023 seeking its comments regarding feasibility of undertaking the investigation of the case and that the C.B.I. vide its letter dated 06.02.2023 submitted its feasibility for taking up the investigation of the case and requested the Department of Personnel and Training, Government of India to issue notification under section 5 of the DSPE Act. It has, thus, been stated and argued on behalf of the Government of India that on consideration of relevant factors including the feasibility expressed by the CBI to undertake the investigation and justification provided by the State of Uttar Pradesh for transferring the investigation to the CBI, the Government of India issued the notification dated 06.01.2023 under section 5 of the DSPE Act and that there is no illegality in the said notification for the reason that all relevant factors have been taken into account before issuing the notification. Submission, thus, on behalf of the Union of India is that the writ petition is liable to to be dismissed at its threshold.

16. Shri Shiv P. Shukla, learned counsel representing the CBI has admitted that the CBI submitted its feasibility to the Government of India for taking up the investigation of the F.I.R. and that once the investigation has been handed over to the CBI, the CBI has re-registered the F.I.R. on 07.01.2023, under sections 386, 342, 504, 506, 409, 420, 467, 468, 471, and 120B of I.P.C and section 7 of Prevention of Corruption Act. The place of occurrence as described therein are Agra, Kanpur, Lucknow and other places. It has, thus, been stated that on re-registration of the F.I.R. and the matter having been validly transferred to the C.B.I., it is investigating the reported crime.

17. On behalf of State of U.P. the prayers made in the writ petition have been opposed and it has been stated that having inter-State ramification of the reported crime, the State Government thought it proper to make a request to the Central Government to hand over the investigation to the CBI and accordingly on relevant considerations it accorded its consent under section 6 of the DSPE Act on the basis of which the Government of India issued notification under section 5 of the said Act and the matter is under investigation at present by the CBI. Submission further on behalf of the State of U.P. is that no one has got any legal right to insist that investigation of any reported crime be conducted by a particular or specific investigating agency and accordingly the writ petition is misconceived which is liable to be dismissed.

18. Shri Ajay Tiwari, learned counsel representing the petitioner in rejoinder has refuted the aforesaid submissions made by the learned counsel representing the respondents and has submitted vehemently that even if it is a case which bears inter-State ramification, the C.B.I. cannot proceed to investigate

the matter in absence of consent of the respective States as per the requirement of section 6 of DSPE Act. He has further stated that there is nothing on record which reveals that the States other than the State of Uttar Pradesh have given their consent under section 6 of the DSPE Act and accordingly assumption of investigation by the CBI is bad in law which cannot be permitted to proceed any further.

19. We have anxiously considered the rival submissions made by the learned counsel representing the respective parties and have also perused the records available on record of this writ petition as also certain documents produced before us by the learned counsel representing the Government of India which will form part of record of the writ petition.

20. The issue, which emerges on the basis of pleadings available on record as also on the basis of submissions made by the learned counsel representing the respective parties, for our reconsideration and answer are (i) as to whether in the facts of the case consent accorded by the State Government under section 6 of the DSPE Act is vitiated, (ii) as to whether there exists any justifiable/cogent reason which justifies the notification issued by the Government of India under section 5 of the DSPE Act and (iii) as to whether consent of the States other than the State of U.P. under section 6 of the DSPE Act is mandatorily required before the CBI assumes jurisdiction to investigate the F.I.R. on the basis of the order issued by the Government of India on 06.01.2023.

21. Under the scheme of our Constitution there may be some debate about the basic character of our constitution, whether it is federal or quasi federal (quasi unitary), however, the legislative

and executive powers of the States and the Union of India which are co-extensive are governed by the Seventh Schedule appended to the Constitution of India. It contains three lists, namely, List-I-Union List, List II-State List and List III-Concurrent List. Depending upon the subject matter falling in either of these three lists, the Parliament and the respective State Legislatures are competent to legislate on the subjects assigned to them and accordingly the Central Government and the State Governments are also empowered to exercise their executive powers/authority. Entry-2 of List II mentions police (including railway and village police) subject to provisions of entry 2A of List I. Entry 2A of List I pertains to deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of members of such forces while on such deployment. Entry 80 of List I mentions extension of 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 powers and jurisdiction of members of a police force belonging to any State to railway area outside that area.

22. We have to understand the scheme of the DSPE Act, 1946 in the light of the aforesaid entries in List-I and List-II of the Seventh Schedule. Section 5 of DSPE Act reads as under:-

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 power 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 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.

[(3) Where any such order under sub-section (1) is made 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.]"

Section 6 of DSPE Act is also extracted herein below for ready reference:-

"[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.]"

23. As has been held by Hon'ble Supreme Court in the case of *Kanwal Tanuj vs. State of Bihar and others*, reported in (2020) 20 SCC 531, DSPE Act makes a provision for establishing a Special Police Force in Delhi for the investigation of certain offences in the Union Territories and also for extension to other areas of the powers and jurisdiction of its members in regard to investigation of certain offences. The DSPE Act is applicable to the entire India. Section 3 of the Act enables the Central Government to specify the offences or classes of offences which are to be investigated by members of this Force.

Section 5 enables the Central Government to extend the powers and jurisdiction of the members of DSPE for investigation of any offence specified in the notification issued under section 3 in a State not being a Union Territory. In keeping tune with the federal structure of the Constitution, consent of such a State has been made essential, as per requirement of section 6 of DSPE Act for extending the powers and jurisdiction of the members of this force in respect of specified offences said to be committed outside jurisdiction of the Union Territory.

24. Paragraphs 16 and 18 of the judgment in the case of *Kanwal Tanuj (supra)* are quoted herein below:-

"16. The 1946 Act has been enacted to make provision for constitution of a Special Police Force in Delhi for the investigation of certain offences (committed) in the Union Territories, for the superintendence and administration of the said force and for the extension to other areas of the powers and jurisdiction of the members in regard to the investigation of the said offences. This Act applies to the whole of India. Section 2 of the 1946 Act enables the Central Government to constitute a special force to be called DSPE for the investigation in any Union

Territory of specified offences notified under Section 3. Section 3 of the 1946 Act enables the Central Government, by notification in the Official Gazette to specify the offences or classes of offences which are to be investigated by DSPE. It is not in dispute that the offences referred to in the subject FIR are so specified by the notification issued under Section 3.

18. The purport of Section 5 of the 1946 Act is to enable the Central Government to extend the powers and jurisdiction of members of the DSPE for the investigation of any offence or class of offences specified in the notification under Section 3, in a State not being a Union Territory. Such extension of powers and jurisdiction of members of the Special Police Force becomes necessary in respect of specified offences “committed outside the jurisdiction of the Union Territory” referred to in Sections 2 and 3 of the 1946 Act. However, in keeping with the federal structure of the Constitution which is fundamental to the Constitution, consent of such a State has been made essential, as predicated in Section 6 of the 1946 Act.”

25. Hon'ble Supreme Court in the said case of *Kanwal Tanuj (supra)* has also opined that consent in terms of section 6 may not be necessary in respect of any investigation by the members of DSPE in relation to specified offences committed within the Union Territory. Hon'ble Supreme Court has further held that it may be so even if one of the accused involved in a given case may be residing or employed outside the Union Territory, including in connection with the affairs of the State/local body/corporation or a company or a bank of the State or controlled by the State/institution receiving financial aid from the State Government. It has further been held that taking any other view will require completion of formality of taking consent for investigation even in relation to specified offence committed within the Union Territory from the State concerned merely

because of the fortuitous situation that part of the associated offence is committed in the other State. Their Lordships in the said case have further held that such interpretation would result in an absurd situation especially keeping in view the fact that the DSPE Act extends to the whole of India and the DSPE has been constituted with a special purpose. The relevant extract occurring in paragraph 19 of the said judgment in the case of *Kanwal Tanuj (supra)* is also extracted herein below:-

"Such a consent may not be necessary regarding the investigation by the Special Police Force (DSPE) in respect of specified offences committed within the Union Territory and other offences associated therewith. That may be so, even if one of the accused involved in the given case may be residing or employed in some other State (outside the Union Territory) including in connection with the affairs of the State/local body/corporation, company or bank of the State or controlled by the State/institution receiving or having received financial aid from the State Government, as the case may be. Taking any other view would require the Special Police Force to comply with the formality of taking consent for investigation even in relation to specified offence committed within the Union Territory, from the State concerned merely because of the fortuitous situation that part of the associated offence is committed in other State and the accused involved in the offence is residing in or employed in connection with the affairs of that State. Such interpretation would result in an absurd situation especially when the 1946 Act extends to the whole of India and the Special Police Force has been constituted with a special purpose for investigation of specified offences committed within the Union Territory, in terms of notification issued under Section 3 of the 1946 Act."

26. Thus, when we examine the provisions of sections 3, 5 and 6 of the DSPE Act as interpreted by Hon'ble Supreme Court in

the case of *Kanwal Tanuj (supra)* what we find is that scheme therein does not in any manner impinge upon the federal policy as envisaged by our Constitution.

27. It is in the light of the aforesaid legal principle that we need to address the grounds raised by the petitioner impugning the notification of the Government of India extending the powers and jurisdiction of Central Bureau of Investigation to investigate the F.I.R. and also the consent given for the said purpose by the State of Uttar Pradesh.

28. It is true that prior to transfer of the investigation to the C.B.I. with the consent of the State Government the F.I.R. was being investigated by the Special Task Force, Uttar Pradesh under the orders passed by the Additional Director General of Police (Law and Order), however, it appears that the State Government made a reference to the Central Government for extending the powers and jurisdiction of CBI to investigate the F.I.R. in this case considering various aspects, one of which is that the reported crime has inter-State ramifications. In the reference made by the State Government on 29.12.2022 enclosing therewith the consent as per requirement of section 6 of DSPE Act, it has clearly been stated that the case has inter-State spread and ramification. The exact phrase occurring in the reference made by the State Government is "*the case has inter-State spread and ramification*".

29. The reference made by the State Government further states that out of two companies of Ajay Mishra one XLICT is situated in Lucknow U.P. & other SOLITAIRE PRINTOTECH is in Faridabad Haryana and that the company IBF of co-accused Ajay Jain is located in Alwar, Rajasthan. It also mentions that

Ajay Mishra's company XLICT was found to be printing question papers of Munger University, Bihar, CSJM University, Kanpur, Lucknow University, Jamsedpur Women's University, Khwaja Moinuddin Chisti Bhasa University, Lucknow, SGGU, Sarguja, Chattisgarh, MSU, Azamgarh, LNMMU, Darbhanga, Bihar without any authorization and that the actual contract was with Solitaire Printotech, Faridabad.

30. Thus, the reason given by the State Government in its reference made to the Central Government while giving its consent is that the case at hand has inter-State ramification. Hon'ble Supreme Court in the case of *State of West Bengal and others vs. Committee for Protection of Democratic Rights, West Bengal and others*, reported in (2010) 3 SCC 571 has drawn certain conclusions in the context of the Constitutional Scheme and one of such conclusions is that in terms of Entry 2 of List II of the Seventh Schedule on the one hand and Entry 2-A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned. Hon'ble Supreme Court in the said case was dealing with the jurisdiction of Constitutional Courts under Article 32 and 226 of the Constitution of India and has held that the very width of the power under Articles 32 and 226 of the Constitution of India requires caution in its exercise. In so far as question of issuing direction to C.B.I. to conduct investigation in a case is concerned, it has further been held that such power under Articles 32 and 226 of the Constitution must be exercised sparingly, cautiously and in exceptional circumstances and that such power can be exercised where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the

fundamental rights. Taking a clue from what has been held by Hon'ble Supreme Court in the case of *Committee for Protection of Democratic Rights, West Bengal and others (supra)* it can safely be held that power to extend the jurisdiction of C.B.I. to investigate a reported crime in other States can be exercised by the Central Government in certain circumstances, one of which is where the reported crime has national, international or inter-state ramifications.

31. In this case, we have already noticed that the State Government while making the reference to the Central Government for handing over the investigation of the F.I.R. has clearly stated that the matter at hand has inter-state ramifications and has given reasons therefor. The consent granted by the State Government and the order issued by the Central Government for extending the power and jurisdiction of the C.B.I. to investigate the F.I.R. in this case unless is found to be vitiated on account of some mala fide, we are of the view that the consent of the State Government and the order passed by the Central Government cannot be said to be legally untenable.

32. A submission has been made by the learned counsel for the petitioner that the State Government has abdicated its power to the Government of India which impinges upon the federal scheme of our Constitution for the reason that policing is primarily a State subject. In this regard we may notice that no such objection regarding interference in the jurisdiction of the State Government to investigate a reported crime touching upon the federal structure has been made on behalf of the State of Uttar Pradesh before us. In absence of any such objection by the State Government and also taking into consideration the fact that it was on the reference made by the State Government on

29.12.2022 that the Central Government took a decision thereafter on 06.01.2023, that too, after procuring the feasibility of investigation from the Central Bureau of Investigation, we are unable to agree with this submission made by the learned counsel for the petitioner. We also notice that the reference made by the State Government on 29.12.2022 was in tune with the guidelines issued by the Department of Personnel and Training, Government of India vide its circular dated 22.11.2018 and the proforma enclosed therewith.

33. it is not a case where the State Government has expressed its consent on the asking of the Central Government or any other authority; rather the process appears to have been initiated by the State Government itself by making a reference on 29.12.2022 whereby the reasons for handing over the investigation to the CBI were furnished to the Central Government along with its consent, which culminated in passing of the order by the Central Government on 06.01.2023 on relevant considerations including consideration of the feasibility communicated to the Central Government by the CBI for investigation of the F.I.R.

34. As noticed above, it has been argued on behalf of the petitioner that the impugned action which has resulted in transfer of investigation of the F.I.R. to the CBI is devoid of relevant material considerations and is without any rationale or legally tenable satisfaction. Such submission, in the facts of the case as narrated above, are not tenable. The relevant material as furnished by the State Government seeking transfer of investigation to the CBI were provided by it in its reference made to the Central Government vide letter dated 29.12.2022 which *inter alia* stated that the case at hand has inter-state ramification.

35. Taking into consideration the law laid down by Hon'ble Supreme Court in the case of *Committee for Protection of Democratic Rights, West Bengal and others (supra)* we are of the opinion that in a situation where the reported crime has inter-state ramifications, the same will be a relevant material for the Central Government to exercise the powers under section 5 of the DSPE Act. The rationale seeking transfer of the F.I.R. in this case is mentioned in the reference made by the State Government to the Central Government vide its letter dated 29.12.2022. Thus, submission that the transfer of investigation in this case does not have any rationale, in our considered opinion, merits rejection.

36. So far as the argument raised by the learned counsel for the petitioner that the power to transfer the F.I.R. to the CBI in this case has been exercised in a colourable manner is concerned, we may only note that in absence of any material to substantiate such submissions, this ground fails. As already observed above, the primary reason, which appears to us, for the Central Government to have extended the powers and jurisdiction of CBI to investigate the F.I.R. in this case is the inter-state ramification of the reported crime which is reflected from the reference made by the State Government by means of its letter dated 29.12.2022.

37. Lastly, it has been argued on behalf of the learned counsel for the petitioner very vehemently that even if the reported crime in this case has inter-state ramification, unless and until the consent in terms of section 6 of the DSPE Act is given by all the States concerned, the CBI can not be legally permitted to assume the jurisdiction to investigate the F.I.R. in this case.

38. For considering the aforesaid submissions raised on behalf of the petitioner we may again refer to the judgment of Hon'ble Supreme Court in the case of *Kanwal Tanuj (supra)*. The facts of this case are that the appellant therein (Kanwal Tanuj) was named as an accused along with one Shri C. Sivakumar, CEO, Bhartiya Rail Bijli Company Ltd., Nabinagar, District-Aurangabad, Bihar on the basis of the F.I.R. registered by the CBI pursuant to information received by it. The matter related to large scale corruption and siphoning off Government funds in land acquisition for the plant of Bhartiya Rail Bijli Company Ltd. by its officials in criminal connivance with Local District Administration of District Aurangabad, Bihar. Kanwal Tanuj filed a writ petition before Hon'ble Patna High Court for quashing of the F.I.R. registered by the CBI and also sought a declaration that since the F.I.R. was lodged against him, who was State Government employee, without prior permission of the State Government, thus, in violation of section 6 of DSPE Act, 1946 the F.I.R. was registered without jurisdiction.

39. Hon'ble Patna High Court considered the matter and also noticed the fact that Bhartiya Rail Bijli Company is affiliated/associated to National Thermal Power Corporation Ltd. and the Railways respectively and that registered office of Bhartiya Rail Bijli Company was in Delhi and the allegations regarding defrauding the company and siphoning off funds had occurred in Delhi and as such the CBI was competent to register the F.I.R. at Delhi and to carry on the investigation in that regard. The High Court, thus, did not agree with the submissions of *Kanwal Tanuj* in the light of the said facts and dismissed the writ petition. The matter was carried to Hon'ble Supreme Court by the appellant therein and the *Hon'ble Supreme Court in its*

judgment inter alia concluded that requiring the C.B.I. to take consent in relation to specified offence committed within the Union Territory at Delhi from the State concerned merely because of the fortuitous situation that part of the associated offence is committed in other State and the accused involved in the offence is residing in or employed in connection with the affairs of that State would result in an absurd situation keeping in view the fact that DSPE extends to whole of India.

(Emphasis by the Court)

40. The relevant observations made by Hon'ble Supreme Court in para 19 in the case of *Kanwal Tanuj (supra)* have already been extracted above. The Hon'ble Supreme Court in the said case of *Kanwal Tanuj (supra)* has also noticed that the offence was committed at Delhi, for which reason the Delhi Courts will have the jurisdiction to take cognizance thereof and further that the investigation of the stated offence may incidentally transcend to the territory of the State of Bihar because of the acts of commission and omission of the appellant who was a resident of Bihar and employed in connection with the affairs of the State of Bihar and as such the said reason will not come in the way of CBI from investigating the offence. Hon'ble Supreme Court has further observed that "*if the State police has had no jurisdiction to investigate the offence in question, as registered, then, seeking consent of the State in respect of the State in respect of such offence does not arise. Any other approach would render the special provisions of the the 1946 Act otiose.*" Thus, one of the tests laid down by the Hon'ble Supreme Court in the case of *Kanwal Tanuj (supra)* is that in case any State does not have any jurisdiction to investigate the reported crime, consent of such a State in respect of such an offence for investigation by

C.B.I. will not be required, otherwise the provisions of DSPE Act will be rendered unworkable.

41. We may also refer to a Division Bench judgment of Hon'ble Delhi High Court in the case of *Anand Agarwal vs. Union of India and others*, reported in **(2018) SCC Online Del 11713**. In the background facts of the said case it has been held that while consent of the State Government might be necessary for registration of a case in that particular State, however, to say that the C.B.I. must seek prior consent of every State where the investigation is to be conducted, would make the scheme of sections 5 and 6 of DSPE Act unworkable. Hon'ble Delhi High Court in the said case of *Anand Agarwal (supra)* has noticed the view taken by Hon'ble Patna High Court in *Kanwal Tanuj (supra)* in respect of which the Hon'ble Supreme Court decided the appeal by means of the judgment report in **(2020) 2 SCC 531**. The observations made and law laid down by Hon'ble Supreme Court in the case of *Kanwal Tanuj (supra)* has already noticed by us above.

42. If we have a re-look to the facts of this case we find that the F.I.R. has been registered in Uttar Pradesh and the State Government in its reference sent to the Central Government for transferring the investigation to the C.B.I. has stated that the case has inter-state ramification, that is to say, it has ramification in State of U.P., State of Bihar, State of Rajasthan, State of Haryana and State of Chhattisgarh. However, if we consider the nature of allegations contained in the First Information Report, we do not find it a case where except for the State of U.P., any other State will have jurisdiction to investigate the F.I.R. and hence in view of the law laid down by the Hon'ble Supreme Court in the case

of *Kanwal Tanuj (supra)*, in our opinion, for this reason as well no consent of other States in this case is required.

43. Paragraph 24 of the judgment in the case of *Kanwal Tanuj (supra)* is extracted herein below:

"24. Indisputably, the registered office of BRBCL is within the jurisdiction of the Union Territory of Delhi (National Capital Territory of Delhi) and allegedly the offence has been committed at Delhi, for which reason the Delhi Court will have jurisdiction to take cognizance thereof. To put it differently, the offence in question has been committed outside the State of Bihar. The investigation of the stated offence may incidentally transcend to the territory of the State of Bihar because of the acts of commission and omission of the appellant who is resident of that State and employed in connection with the affairs of the State of Bihar. That, however, cannot come in the way of Special Police Force (DSPE) from investigating the offence committed at Delhi and has been so registered by it and is being investigated. Had it been an offence limited to manipulation of official record of the State and involvement of officials of the State of Bihar, it would have been a different matter. It is not the case of the appellant or the State of Bihar that even an offence accomplished at Delhi of defrauding of the Government of India undertaking (having registered office at Delhi) and siphoning of the funds thereof at Delhi can be investigated by the State of Bihar. If the State police has had no jurisdiction to investigate the offence in question, as registered, then, seeking consent of the State in respect of such offence does not arise. Any other approach would render the special provisions of the 1946 Act otiose."

44. From the submissions made by the learned counsel appearing for the Union of India, what we find is that though the F.I.R. has been registered in U.P., however, investigation of the reported offence may travel to the territories of other States, as observed above. At the cost of repetition, however, we may note that having regard to the recitals and accusations made in the F.I.R., we are of the considered opinion that the offence

mentioned therein can be investigated by an Investigating Agency of the State of Uttar Pradesh and not by investigating agencies of other States for the reason that the investigation into the F.I.R. in this case may travel to other States only incidentally as the alleged crime as disclosed in the First Information Report is said to have been committed in the State of U.P. Thus, the other States will have no jurisdiction to investigate the F.I.R. and accordingly no consent of other States in terms of section 6 of the DSPE Act is required for issuing an order extending the powers and jurisdiction of C.B.I. to investigate the F.I.R. in this case.

45. Learned counsel representing the respondents have also argued that there cannot be any insistence on the part of the accused persons of a crime to get the investigation conducted by an Investigating Agency of their choice. In this respect we may only observe that it cannot be any specific choice of any accused to get the investigation conducted by a particular investigating agency, however, as held by Hon'ble Supreme Court in the case of *Committee for Protection of Democratic Rights, West Bengal and others (supra)* Article 21 of the Constitution of India in its application takes within its fold enforcement of rights of both, the victim and the accused as well. It has further been held that the State has the duty to enforce right of every citizen by providing for fair and impartial investigation against any person accused of commission of a cognizable offence. The Apex Court has gone to the extent of observing that in certain situations witness to the crime may also seek for and shall be granted protection. Conclusion (ii) drawn by Hon'ble Supreme Court, has been mentioned in paragraph 68 of the report which is extracted herein below:-

"(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State."

46. Thus, the question is not as to whether an accused or victim has any right to seek transfer of a reported crime; rather the point is that the reported crime should be investigated in the most fair and impartial manner.

47. In this regard, however, it is also to be noticed that the petitioner has not been able to demonstrate as to what prejudice will be caused to him in case the F.I.R. is investigated by the CBI. Except for stating that the F.I.R. reveals allegations against the accused -Vinay Pathak that he had told the petitioner that he had to give money in bribe to his superiors, nothing has been brought on record to substantiate that the transfer of the F.I.R. in this case for investigation to the CBI has been made to derail the investigation. The reason for transfer, as discussed above, are available in the reference made by the State Government along with its consent to the Central Government for making an order extending the powers and jurisdictions of CBI to investigate the F.I.R. in this case.

48. For the discussion made and reasons given above, we are unable to persuade ourselves to subscribe to the arguments made by the learned counsel for the petitioner.

49. Resultantly, the writ petition fails which is hereby **dismissed.**

50. There will, however, be no order as to costs.

Order Date :- 21.02.2023

akhilesh/

[N. K. Johari, J.]

[D. K. Upadhyaya, J.]