

Supreme Court Judgment: Vineet Narain case

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Background of the case

The Judgment of the Court was delivered by

Verma, C.J. - These writ petitions under Article 32 of the Constitution of India brought in public interest, to begin with, did not appear to have potential of escalating to the dimensions they reached or to give rise to several issues of considerable significance to the implementation of rule of law, which they have during their progress. They began as yet another complaint of inertia by the Central Bureau of Investigation (CBI) in matters where the accusation made was against high dignitaries. It was not the only matter of its kind during the recent past. The primary question was: Whether it is within the domain of judicial review and it could be an effective instrument for activating the investigative process which is under the control of the executive? The focus was on the question, whether any judicial remedy is available in such a situation? However, as the case progressed, it required innovation of a procedure within the constitutional scheme of judicial review to permit intervention by the court to find a solution to the problem. This case has helped to develop a procedure within the discipline of law for the conduct of such a proceeding in similar situations. It has also generated awareness of the need of probity in public life and provided a mode of enforcement of accountability in public life. Even though the matter was brought to the court by certain individuals claiming to represent public interest, the procedure devised was to appoint the petitioners' counsel as the amicus curiae and to make such orders from time to time as were consistent with public interest. Intervention in the proceedings by everyone else was shut out but permission was granted to all, who so desired, to render such assistance as they could, and to provide the relevant material available with them to the amicus curiae for being placed before the court for its consideration. In short, the proceedings in this matter have had great educative value and it does appear that it has helped in future decision-making and functioning of the public authorities.

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A brief narration of the facts of this case is necessary: On 25.3.1991, one Ashfaq Hussain Lone, alleged to be an official of the terrorist organisation Hizbul Mujahideen, was arrested in Delhi. Consequent upon his interrogation raids were conducted by the Central Bureau of Investigation (CBI) on the premises of Surender Kumar Jain, his brothers, relatives and businesses. Along with Indian and foreign currency, the CBI seized two diaries and two notebooks from the premises. They contained detailed accounts of vast payments made to persons identified only by initials. The initials corresponded to the initials of various high-ranking politicians, in power and out of power, and of high-ranking bureaucrats. Nothing having been done in the matter of investigating the Jains or the contents of their diaries, the present writ petitions were filed on 4.10.1993, in the public interest under Article 32 of the Constitution of India.

The gist of the allegations in the writ petitions is that government agencies like the CBI and the Revenue authorities had failed to perform their duties and legal obligations in as much as they had failed to investigate matters arising out of the seizure of the "Jain Diaries"; that the apprehension of terrorists had led to the discovery of financial support to them by clandestine and illegal means using tainted funds obtained through "havala" transactions; that this had also disclosed a nexus between politicians, bureaucrats and criminals, who were recipients of money from unlawful sources, given for unlawful considerations that the CBI and other government agencies had failed to investigate the matter take it to its logical conclusion and prosecute all persons who were found to have committed an offence; that this

was done with a view to protect the persons involved, who were very influential and powerful; that the matter disclosed a nexus between crime and corruption at high places in public life and it posed a serious threat to the integrity, security and economy of the nation; that probity in public life, the rule of law and the preservation of democracy required that the government agencies be compelled to duly perform their legal obligations and to proceed in accordance with law against every person involved, irrespective of where he was placed in the political hierarchy. The writ petitions prayed, inter alia for the following reliefs:

[a] that the above said offences disclosed by the facts mentioned in the petition be directed to be investigated in accordance with law;

[b] that this Hon'ble Court may be pleased to appoint officers of the police or others in whose integrity, independence and competence this Hon'ble Court has confidence for conducting and/or supervising the said investigation;

[c] that suitable directions be given by this Hon'ble Court and orders issued to ensure that the culprits are dealt with according to law;

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[f] that directions be given so that such evil actions on the part of the investigating agencies and their political superiors are not repeated in future."

It will be seen that the reliefs sought in the writ petitions fall into two broad classes. The first class relates to investigations in the matter of the "Jain Diaries". The second class (prayer (f)) relates to the manner in which investigations of offences of a similar nature that may occur hereafter should be conducted.

Independent Review Committee

The IRC is a body constituted by the Central Government itself as a result of its perception that the constitution and functioning of the CBI, CVC and Directorate of Enforcement require a close scrutiny in the background of the recent unsatisfactory functioning of these agencies with a view to improve their functioning. The view taken by the IRC is a reaffirmation of this belief shared by everyone. The preface to the report indicates the reason for the constitution of the IRC and says that :

"In the past several years, there has been progressive increase in allegations of corruption involving public servants. Understandably, cases of this nature have attracted heightened media and public attention. A general impression appears to have gained ground that the Central investigating agencies concerned are subject to extraneous pressures and have been indulging in dilatory tactics in not bringing the guilty to book. The decisions of higher courts to directly monitor investigation in certain cases have added to the aforesaid belief."

There can thus be no doubt that there is need for the exercise we were called upon to perform and which has occasioned consideration of this crucial issue by this Court in exercise of its powers conferred by the Constitution of India. The conclusions reached by the IRC and the recommendations it has made for improving the functioning and thereby the image of these agencies is a further reaffirmation of this general belief. There can also be no doubt that the conclusions reached by the IRC and its recommendations are the minimum which require immediate acceptance and implementation in a bid to arrest any further decay of the polity. It follows that the exercise to be performed now by this Court is really to consider whether

any modifications/additions are required to be made to the recommendations of the IRC for achieving the object for which the Central Government itself constituted the IRC. We are informed by the learned Attorney General that further action on the report of the IRC could not be taken so far because of certain practical difficulties faced by the Central Government but there is no negative reaction to the report given by the Central Government.

The only caveat entered by the Attorney General is on the basis of a note by an individual Minister in the Central Cabinet in which emphasis has been laid that the ultimate responsibility for the functioning of these agencies to Parliament is that of the Minister concerned and this aspect may be kept in mind. It has been specifically mentioned that the Minister would remain the final disciplinary authority and would have the power to refer complaints against the agency or its officers to an appropriate authority for necessary action. There can be no quarrel with the Minister's ultimate responsibility to Parliament for the functioning of these agencies and he being the final disciplinary authority in respect of the officers of the agency with power to refer complaints against them to the appropriate authority. Some other specific powers of the Minister were indicated as under:

1. The Minister has the power to review the working of the agencies which are under his Department.
2. The Minister has the power to give broad policy directions regarding investigation and prosecution of classes or categories of cases.
3. The Minister has the power to appraise the quality of the work of the Head of the agency as well as other senior officers of the agency.
4. The minister has the power to call for information regarding progress of cases.

It is sufficient to say that the Minister's general power to review the working of the agency and to give broad policy directions regarding the functioning of the agencies and to appraise the quality of the work of the head of the agency and other officers as the executive head is in no way to be diluted. Similarly, the Minister's power to call for information generally regarding the cases being handled by the agencies is not to be taken away. However, all the powers of the Minister are subject to the condition that none of them would extend to permit the Minister to interfere with the course of investigation and prosecution in any individual case and in that respect the officers concerned are to be governed entirely by the mandate of law and the statutory duty cast upon them.

Validity of Single Directive

We may now refer to the two decisions on which specific reliance has been placed by the learned Attorney General before us as well as the IRC in its report.

The Delhi Special Police Establishment Act, 1946 is an Act to make provision for the constitution of a special police force in Delhi for the investigation of certain offences 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 members of the said force in regard to the investigation of the said offences. Section 6 of the Act requires consent of the State Government to exercise powers and jurisdiction under the Act by the Delhi Special Police Establishment. This is because "Police" is a State subject, being in List II Entry 2 of the Seventh Schedule. For this reason, the learned Attorney General contended that the power and jurisdiction of the State Police in respect of an offence within its jurisdiction remains intact and is not inhibited by the Single Directive; and that the CBI alone is inhibited thereby. Section 2 to the Act deals with constitution and powers of the Special Police Establishment (SPE). This is now the CBI has been

constituted. Section 3 provides for offences to be investigated by the Spe and says that the offences or class of offences to be investigated by the agency may be specified by notification in the Official Gazette by the Central government.

Section 3 of the Police Act, 1861 is in pari materia with Section 4 of the Delhi Special Police Establishment Act, 1946. These sections read as under :

Section 3 of the Police Act, 1861:

"3. Superintendence in the State government. – The superintendence of the police throughout a general police district shall vest in and shall be exercised by the State Government to which such district is subordinate, and except as authorised under the provisions of this Act, no person, officer or court shall be empowered by the State Government to supersede or control any police functionary."

Sections 3 and 4 of the Delhi Special Police Establishment Act, 1946:

"3. Offences to be investigated by SPE. – The Central Government may, by notification in the Official Gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment.

4. Superintendence and administration of SPE.-

(1) The superintendence of the Delhi Special Police Establishment shall vest in the Central government.

(2) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central government who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector General of Police in respect of the police force in a State, as the Central Government may specify in this behalf."

There can be no doubt that the overall administration of the said force, i.e., CBI vests in the Central Government, which also includes, by virtue of Section 3, the power to specify the offences or class of offences which are to be investigated by it. The general superintendence over the functioning of the Department and specification of the offences which are to be investigated by the agency is not the same as and would not include within it the control of the initiation and the actual process of investigation, i.e., direction. Once the CBI is empowered to investigate an offence generally by its specification under Section 3, the process of investigation, including its initiation, is to be governed by the statutory processions which provide for the initiation and manner of investigation of the offence. This is not an area which can be included within the meaning of "superintendence" in Section 4(1).

It is, therefore, the notification made by the Central Government under Section 3 which confers and determines the jurisdiction of the CBI to investigate an offence; and once that jurisdiction is attracted by virtue of the notification under Section 3, the actual investigation is to be governed by the statutory provisions under the general law applicable to such investigations. This appears to us the proper construction of Section 4(1) in the context, and it is in harmony with the scheme of the Act, and Section 3 in particular. The word "superintendence" in Section 4(1) cannot be construed in a wider sense to permit supervision of the actual investigation of an offence by the CBI contrary to the manner provided by the statutory provisions. The broad proposition urged on behalf of the Union of India that is can issue any directive to the CBI to curtail or inhibit its jurisdiction to investigate an offence specified in the notification issued under Section 3 by a directive under Section 4(1) of the Act cannot be accepted. The jurisdiction of the CBI to investigate an offence is to be determined with reference to the notification issued under Section 3 and not by any separate order not having that character.

This view does not conflict with the decision in J.A.C. Saldanha⁸ as earlier indicated. In Saldanha⁸ the

question was whether an unsatisfactory investigation already made could be undertaken by another officer for further investigation of the offence so that the offence was properly investigated as required by law, and it was not to prevent the investigation of an offence. The single Directive has the effect of restraining recording of FIR and initiation of investigation and not of proceeding with investigation, as in Saldanha⁸. No authority to permit control of statutory powers exercised by the police to investigate an offence within its jurisdiction has been cited before us except K. Veeraswami⁷ which we have already distinguished. The view we take accords not only with reason but also with the very purpose of the law and is in consonance with the basic tenet of the rule of law.

Once the jurisdiction is conferred on the CBI to investigate an offence by virtue of notification under Section 3 of the Act, the powers of investigation are governed by the statutory provisions and they cannot be esteemed or curtailed by an executive instruction issued under Section 4(1) thereof. This result follows from the fact that conferment of jurisdiction is under Section 3 of the Act and exercise of powers of investigation is by virtue of the statutory jurisdiction cannot be subject to executive control.

There is no similarity between a mere executive order requiring prior permission or sanction for investigation of the offence and the sanction needed under the statute for prosecution. The requirement of sanction for prosecution being provided in the very statute which enacts the offence, the sanction for prosecution is a prerequisite for the court to take cognizance of the offence. In the absence of any statutory requirement of prior permission or sanction for investigation, it cannot be imposed as a condition precedent for initiation of the investigation once jurisdiction is conferred on the CBI to investigate the offence by virtue of the notification under Section 3 of the Act. The word "superintendence" in Section 4(1) of the Act in the context must be construed in a manner consistent with the other provisions of the Act and the general statutory powers of investigation which govern investigation even by the CBI. The necessity of previous sanction for prosecution is provided in Section 6 of the Prevention of Corruption Act, 1947 (Section 19 of the 1988 Act) without which no court can take cognizance of an offence punishable under Section 5 of that Act. There is no such previous sanction for investigation provided for either in the Prevention of Corruption Act or the Delhi Special Police Establishment Act or in any other statutory provision. The above is the only manner in which Section 4(1) of the Act can be harmonised with Section 3 and the other statutory provisions.

The Single Directive has to be examined in this background. The law does not classify offenders differently for treatment thereunder, including investigation of offences and prosecution for offences, according to their status in life. Every person accused of committing the same offence is to be dealt with in the same manner in accordance with law, which is equal in its application to everyone. The Single Directive is applicable only to certain persons above the specified level who are described as "decision – making officers". The question is whether any distinction can be made for them for the purpose of investigation of an offence of which they are accused.

Obviously, where the accusation of corruption is based on direct evidence and it does not require any inference to be drawn dependent on the decision-making process, there is no rational basis to classify them differently. In other words, if the accusation be bribery which is supported by direct evidence of acceptance of illegal gratification by them, including trap case, it is obvious that no other factor is relevant and the level or status of the offender is irrelevant. It is for this reason that it was conceded that such case, i.e., of bribery, including trap cases, are outside the scope of the Single Directive. After General support inclusion within the Single Directive of cases in which the offender is alleged to be in possession of disproportionate assets. It is clear that the accusation of possession of disproportionate assets by the person is also based on direct evidence and no factor pertaining to the expertise of decision –making is involved therein. We have, therefore, no doubt that the Single Directive cannot include within its ambit cases of possession of disproportionate assets by the offender. The question now is only with regard to cases other than those of bribery, including trap case, and of possession of disproportionate assets being covered by the Single Directive.

There may be other cases where the accusation cannot be supported by direct evidence and is a matter of inference of corrupt motive for the decision, with nothing to prove directly any illegal gain to the

decision-maker. Those are cases in which the inference drawn is that the decision must have been made for a corrupt motive because the decision could not have been reached otherwise by an officer at that level in the hierarchy. This is, therefore, an area where the opinion of persons with requisite expertise in decision-making of that kind is relevant and, may be even decisive in reaching the conclusion whether the allegation requires any investigation to be made. In view of the fact that the CBI or the police force does not have the expertise within its fold for the formation of the requisite opinion in such case, the need for the inclusion of such a mechanism comprising of experts in the field as a part of the infrastructure of the CBI is obvious, to decide whether the accusation made discloses grounds for a reasonable suspicion of the commission of an offence and it requires investigation. In the absence of any such mechanism within the infrastructure of the CBI, comprising of experts in the field who can evaluate the material for the decision to be made, introduction therein of a body of experts having expertise of the kind of business which requires the decision to be made, can be appreciated. But then, the final opinion is to be of the CBI with the aid of that advice and not that of anyone else. It would be more appropriate to have such a body within the infrastructure of the CBI itself.

The Single Directive cannot, therefore, be upheld as valid on the ground of it being permissible in exercise of the power of superintendence of the Central Government under Section 4(1) of the Act. The matter has now to be considered de hors the Single Directive.

Directions of Court

As a result of the aforesaid discussion, we hereby direct as under:

Central Bureau of Investigation (CBI) and Central Vigilance Commission (CVC):

1. The Central Vigilance Commission (CVC) shall be given statutory status.
2. Selection for the post of Central Vigilance Commissioner shall be made by a Committee comprising the Prime Minister, Home Minister and the Leader of the Opposition from a panel of outstanding civil servants and others with impeccable integrity, to be furnished by the Cabinet Secretary. The appointment shall be made by the President on the basis of the recommendations made by the Committee. This shall be done immediately.
3. The CVC shall be responsible for the efficient functioning of the CBI. While Government shall remain answerable for the CBI's functioning, to introduce visible objectivity in the mechanism to be established for overseeing the CBI's working, the CVC shall be entrusted with the responsibility of superintendence over the CBI's functioning. The CBI shall report to the CVC about cases taken up by it for investigation; progress of investigation; cases in which charge-sheets are filed and their progress. The CVC shall review the progress of all cases moved by the CBI for sanction of prosecution of public servants which are pending with the competent authorities, specially those in which sanction has been delayed or refused.
4. The Central Government shall take all measures necessary to ensure that the CBI functions effectively and efficiently and is viewed as a non-partisan agency.
5. The CVC shall have a separate section in its Annual Report on the CBI's functioning after the supervisory function is transferred to it.
6. Recommendations for appointment of the Director, CBI shall be made by a Committee headed by the Central Vigilance Commissioner with the Home Secretary and Secretary (Personnel) as members. The views of the incumbent Director shall be considered by the Committee for making the best choice. The Committee shall draw up a panel of IPS officers on the basis of their seniority, integrity, experience in investigation and anti-corruption work. The final selection shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee. If none among the panel

is found suitable, the reasons thereof shall be recorded and the Committee asked to draw up a fresh panel.

7. The Director, CBI shall have a minimum tenure of two years, regardless of the date of his superannuation. This would ensure that an officer suitable in all respects is not ignored merely because he has less than two years to superannuate from the date of his appointment.

8. The transfer of an incumbent Director, CBI in an extraordinary situation, including the need for him to take up a more important assignment, should have the approval of the Selection Committee.

9. The Director, CBI shall have full freedom for allocation of work within the agency as also for constituting teams for investigations. Any change made by the Director, CBI in the Head of an investigative team should be for cogent reasons and for improvement in investigation, the reasons being recorded.

10. Selection/ extension of tenure of officers up to the level of Joint Director (JD) shall be decided by a Board comprising the Central Vigilance Commissioner, Home Secretary and Secretary (Personnel) with the Director, CBI providing the necessary inputs. The extension of tenure or premature repatriation of officers up to the level of Joint Director shall be with final approval of this Board. Only cases pertaining to the appointment or extension of tenure of officers of the rank of Joint Director or above shall be referred to the Appointments Committee of the Cabinet (ACC) for decision.

11. Proposals for improvement of infrastructure, methods of investigation, etc. should be decided urgently. In order to strengthen CBI's in-house expertise, professionals from the Revenue, Banking and Security sectors should be inducted into the CBI.

12. The CBI Manual based on statutory provisions of the CrPC provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned.

13. The Director, CBI shall be responsible for ensuring the filing of charge-sheets in courts within the stipulated time-limits, and the matter should be kept under constant review by the Director, CBI.

14. A document on CBI's functioning should be published within three months to provide the general public with a feedback on investigations and information for redress of genuine grievances in a manner which does not compromise with the operational requirements of the CBI.

15. Time-limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office.

16. The Director, CBI should conduct regular appraisal of personnel to prevent corruption and/ or inefficiency in the agency.

Enforcement Directorate

1. A Selection Committee headed by the Central Vigilance Commissioner and including the Home Secretary, Secretary (Personnel) and Revenue Secretary, shall prepare a panel for appointment of the Director, Enforcement Directorate. The appointment to the post of Director shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee.

2. The Director, Enforcement Directorate like the Director, CBI shall have a minimum tenure of two years. In his case also, premature transfer for any extraordinary reason should be approved by the aforesaid

Selection Committee headed by the Central Vigilance Commissioner.

3. In view of the importance of the post of Director, Enforcement Directorate, it shall be upgraded to that of an Additional Secretary/ Special Secretary to the Government.
4. Officers of the Enforcement Directorate handling sensitive assignments shall be provided adequate security to enable them to discharge their functions fearlessly.
5. Extension of tenure up to the level of Joint Director in the Enforcement Directorate should be decided by the said Committee headed by the Central Vigilance Commissioner.
6. There shall be no premature media publicity by the CBI/ Enforcement Directorate.
7. Adjudication/ commencement of prosecution shall be made by the Enforcement Directorate within a period of one year.
8. The Director, Enforcement Directorate shall monitor and ensure speedy completion of investigations/ adjudications and launching of prosecutions. Revenue Secretary must review their progress regularly.
9. For speedy conduct of investigations abroad, the procedure to approve filing of applications for Letters Rogatory shall be streamlined and, if necessary, Revenue Secretary authorised to grant the approval.
10. A comprehensive circular shall be published by the Directorate to inform the public about the procedures/ systems of its functioning for the sake of transparency.
11. In-house legal advice mechanism shall be strengthened by appointment of competent legal advisers in the CBI/ Directorate of Enforcement.
12. The Annual Report of the Department of Revenue shall contain a detailed account on the working of the Enforcement Directorate.

Nodal Agency

1. A Nodal Agency headed by the Home Secretary with Member (Investigation), Central Board of Direct Taxes, Director General, Revenue Intelligence, Director, Enforcement and Director CBI as members, shall be constituted for coordinated action in cases having politico-bureaucrat-criminal nexus.
2. The Nodal Agency shall meet at least once every month.
3. Working and efficacy of the Nodal Agency should be watched for about one year so as to improve it upon the basis of the experience gained within this period.

Prosecution Agency

1. A panel of competent lawyers of experience and impeccable reputation shall be prepared with the advice of the Attorney General. Their services shall be utilized as prosecuting counsel in cases of significance. Even during the course of investigation of an offence, the advice of a lawyer chosen from the panel should be taken by the CBI/ Enforcement Directorate.
2. Every prosecution which results in the discharge or acquittal of the accused must be reviewed by a lawyer on the panel and, on the basis of the opinion given, responsibility should be fixed for dereliction of duty, if any, of the officer concerned. In such cases, strict action should be taken against the officer found

guilty of dereliction of duty.

3. The preparation of the panel of lawyers with the approval of the Attorney General shall be completed within three months.

4. Steps shall be taken immediately for the constitution of an able and impartial agency comprising persons of unimpeachable integrity to perform functions akin to those of the Director of Prosecutions in U.K. On the constitution of such a body, the task of supervising prosecutions launched by the CBI/ Enforcement Directorate shall be entrusted to it.

5. Till the constitution of the aforesaid body, Special Counsel shall be appointed for the conduct of important trials on the recommendation of the Attorney General or any other law officer designated by him.