

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10660 OF 2010

CENTER FOR PIL & OTHERS

.....APPELLANTS

VERSUS

UNION OF INDIA & OTHERS

.....RESPONDENTS

O R D E R

1. By this order we are disposing of the prayer made by the appellants for appointment of a group of independent persons to assist the Court in monitoring the investigation being carried out by the Central Bureau of Investigation (CBI), the Enforcement Directorate and the Income Tax Department in '2G case'.

2.The writ petition filed by the appellants before the Delhi High Court for ordering an investigation by the CBI or a Special Investigation Team into what was termed as '2G Spectrum Scam' for unearthing the role of respondent no. 5 Shri A. Raja, the then Union Minister, Department of Telecommunications, senior officers of the department, middlemen, businessmen and others was dismissed by the Delhi High Court vide order dated 25.5.2010.

3. The appellants challenged the order of the Delhi High Court in SLP(C) No. 24873/2010. By a detailed order dated 16.12.2010, this Court granted leave and issued the following directions:

“(i) CBI shall conduct thorough investigation into various issues highlighted in the report of the Central Vigilance Commission, which was forwarded to the Director, CBI vide letter dated 12-10-2009 and the report of the CAG, who have prima facie found serious irregularities in the grant of licences to 122 applicants, majority of whom are said to be ineligible, the blatant violation of the terms and conditions of licences and huge loss to the public exchequer running into several thousand crores. CBI should also probe how licences were granted to large number of ineligible applicants and who was responsible for the same and why TRAI and DoT did not take action against those licensees who sold their stakes/equities for many thousand crores and also against those who failed to fulfil rollout obligations and comply with other conditions of licence.

(ii) CBI shall conduct the investigation without being influenced by any functionary, agency or instrumentality of the State and irrespective of the position, rank or status of the person to be investigated/probed.

(iii) CBI shall, if it has already not registered first information report in the context of the alleged irregularities committed in the grant of licences from 2001 to 2006-2007, now register a case and conduct thorough investigation with particular emphasis on the loss caused to the public exchequer and corresponding gain to the licensees/service providers and also on the issue of allowing use of dual/alternate technology by some service providers even before the decision was made public vide press release dated 19-10-2007.

(iv) CBI shall also make investigation into the allegation of grant of huge loans by the public sector and other banks to some of the companies which have succeeded in obtaining licences in 2008 and find out whether the officers of DoT were

signatories to the loan agreement executed by the private companies and if so, why and with whose permission they did so.

(v) The Directorate of Enforcement/agencies concerned of the Income Tax Department shall continue their investigation without any hindrance or interference by anyone.

(vi) Both the agencies i.e. CBI and the Directorate of Enforcement shall share information with each other and ensure that the investigation is not hampered in any manner whatsoever.

(vii) The Director General, Income Tax (Investigation) shall, after completion of analysis of the transcripts of the recording made pursuant to the approval accorded by the Home Secretary, Government of India, hand over the same to CBI to facilitate further investigation into the FIR already registered or which may be registered hereinafter."

4. In furtherance of the directions given by the Court, the CBI, the Directorate of Enforcement and the Income Tax Department have, from time to time, submitted reports showing the progress made in the investigation of 2G case. After considering the objections raised on behalf of the Union of India, this Court by order dated 11.4.2001 decided the issue relating to appointment of the Special Public Prosecutor.

5. During the hearing of the case Shri Prashant Bhushan, learned counsel for the appellants repeatedly made a request for appointment of a group of independent persons to assist the Court in monitoring the investigation, which request was strongly opposed by Shri K.K. Venugopal.

6. Shri Prashant Bhushan, submitted that keeping in view the nature of the case in which political and executive functionaries of the State have connived with the businessmen for causing loss to the public exchequer to the tune of many thousand crore rupees, some of whom have already been chargesheeted before the Special Judge, CBI, this Court should appoint independent persons for assistance in monitoring the further progress of the case. Learned counsel submitted that the first chargesheet filed by the CBI is accompanied by documents running into 80,000 pages and large number of reports have been submitted before this Court by the CBI, the Enforcement Directorate and the Income Tax Department which require detailed study of different facets of the crime allegedly committed by large number of persons and, therefore, if a group of independent persons is appointed, the monitoring by the Court will become more convenient and effective.

7. Shri K.K. Venugopal, learned senior counsel appearing for the CBI argued that the Court should not entertain the prayer made on behalf of the petitioner and appoint any outsider for assisting it because for the last more than one year the CBI and other agencies have very effectively investigated the case and filed two chargesheets. Learned senior counsel submitted that the Court has also expressed satisfaction with the mode and pace of investigation so far carried out by the CBI and the Enforcement Directorate and, therefore, there is no warrant for appointment

of any other person who may act as a super-CBI. Shri Venugopal emphasized that the Court monitoring the investigation cannot issue direction regarding the manner in which such investigation should be carried out because that would tantamount to interference with the functioning of the CBI which is a statutory body established under the Delhi Special Police Establishment Act, 1946 (for short, 'the 1946 Act'). Learned senior counsel then submitted that even though under Section 8(1) of the Central Vigilance Commission Act, 2003 (for short, 'the 2003 Act') the Central Vigilance Commission has been clothed with the power to exercise superintendence over the functioning of the Delhi Special Police Establishment, it cannot interfere with the investigation or direct the manner in which the investigation should be conducted. Learned senior counsel also submitted that the monitoring before this Court has already come to an end insofar as the chargesheets filed before the Special Court are concerned and in the midst of further investigation there is no justification for appointment of a group of persons to monitor the investigation in the name of assisting the Court.

8. We have considered the respective submissions. In Vineet Narain's case (1998) 1 SCC 226, this Court entertained the petition filed under Article 32 of the Constitution and ordered investigation by the CBI into what came to be known as 'Hawala Case'. After considering the reports submitted from time to time, the three-Judge Bench examined different facets of the need of an

independent agency to investigate the cases of corruption by public servants and issued several directions concerning the CBI, the Central Vigilance Commission, the Enforcement Directorate, etc., including the following:

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

I. 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 investigations; 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.

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."

9. After taking note of the directions given in Vineet Narain's case, the Government introduced the Central Vigilance Commission Bill, 2003, which was finally enacted as the Central Vigilance Commission Act, 2003. The preamble and Sections 3(1), 3(2), 3(3), 8(1)(a), 8(1)(b) and 8(1)(e) of that Act read as under:

"Preamble: An Act to provide for the constitution of a Central Vigilance Commission to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government and for matters connected therewith or incidental thereto.

3. (1) There shall be constituted a body to be known as the Central Vigilance Commission to exercise the powers conferred upon, and to perform the functions assigned to it under this Act and the Central Vigilance Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Ordinance, 1999 (Ord. 4 of 1999) which ceased to operate, and continued under the Government of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Resolution No. 371/20/99-AVD III, dated the 4th April, 1999 as amended vide Resolution of even number, dated the 13th August, 2002 shall be deemed to be the Commission constituted under this Act.

(2) The Commission shall consist of—

- (a) a Central Vigilance Commissioner – Chairperson;
- (b) not more than two Vigilance Commissioners –

Members.

(3) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons—

(a) who have been or are in an All-India Service or in any civil service of the Union or in a civil post under the Union having knowledge and experience in the matters relating to vigilance, policy making and administration including police administration; or

(b) who have held office or are holding office in a corporation established by or under any Central Act or a Government company owned or controlled by the Central Government and persons who have expertise and experience in finance including insurance and banking, law, vigilance and investigations:

Provided that, from amongst the Central Vigilance Commissioner and the Vigilance Commissioners, not more than two persons shall belong to the category of persons referred to either in clause (a) or clause (b).

8. Functions and powers of Central Vigilance Commission - (1) The functions and powers of the Commission shall be to—

(a) exercise superintendence over the functioning of the Delhi Special Police Establishment insofar as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988), or an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

(b) give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1946 (25 of 1946):

Provided that while exercising the powers of superintendence under clause (a) or giving directions under this clause, the Commission shall not exercise powers in such a manner so as to require the Delhi Special Police Establishment to investigate or dispose of any case in a particular manner;

(c) inquire or cause an inquiry or investigation to

be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Government or a corporation established by or under any Central Act, Government company, society and any local authority owned or controlled by that Government, has committed an offence under the Prevention of Corruption Act, 1988 (49 of 1988), or an offence with which a public servant may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

(e) review the progress of investigations conducted by the Delhi Special Police Establishment into offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) or the public servant may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;"

10. A combined reading of the directions given by this Court in Vineet Narain's case (supra) and Sections 8(1)(a), 8(1)(b) and 8(1)(e) of the 2003 Act makes it clear that the Central Vigilance Commission is required to exercise superintendence over the functioning of the Delhi Special Police Establishment in matters relating to the investigation of offences allegedly committed under the Prevention of Corruption Act and/or an offence with which a public servant specified in sub-section (2) of Section 8 of the 2003 Act is charged at the same trial and give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under Section 4(1) of the 1946 Act. However, in view of proviso to Section 8(1)(b) of the 2003 Act the Central Vigilance Commission cannot, while exercising the power of superintendence under clause (a) or giving directions under clause (b), direct Delhi Special Police Establishment to investigate or dispose of any

case in a particular manner. In other words, the power of superintendence cannot be used by the Central Vigilance Commission for interfering with the manner and method of investigation or consideration of any case by the CBI in a particular manner.

11. Although, initially the CBI may not have taken up the matter relating to investigation of 2G case with requisite seriousness, after 16.12.2010 it has satisfactorily conducted the investigation. Therefore, there is no justification to appoint a group of persons to directly or indirectly scrutinise or supervise the further investigation being conducted by the CBI and other agencies. However, keeping in view the nature of the case and involvement of large number of influential persons, we feel that it will be appropriate to require the Central Vigilance Commissioner and the Senior Vigilance Commissioner appointed under Section 3(2) of the 2003 Act to render assistance to the Court in effectively monitoring the further investigation of the case. This course will be perfectly in tune with the mandate of Section 8(1) of the 2003 Act.

12. We, therefore, issue the following directions:

(i) In future copies of the report(s) of the investigation conducted by the CBI and other agencies shall be made available to the Central Vigilance Commissioner in sealed envelopes.

(ii) Within next one week the Central Vigilance Commissioner and the Senior Vigilance Commissioner shall examine the report(s) and send their observations / suggestions to this Court in sealed envelopes which shall be considered along with the report(s) of the CBI and other investigating agencies.

13. The aforesaid direction shall not in any manner be construed as a reflection on the integrity of the investigation so far done by the team of CBI and other investigating agency or which may be done in future or their competence to effectively perform the job in relation to 2G case.

.....J.
(G.S.SINGHVI)

.....J.
(ASOK KUMAR GANGULY)

NEW DELHI;
FEBRUARY 02, 2012.