

A UNION OF INDIA AND ANR.
v.
C. DINAKAR, I.P.S. AND ORS.

APRIL 20, 2004

B [V.N. KHARE, CJ., S.B. SINHA AND DR. AR. LAKSHMANAN, JJ.]

Service Law:

C *Delhi Special Police Establishment Act, 1946—Section 4A (as amended by Section 26 of Central Vigilance Commission Act, 2003)—C.B.I. (Senior Police Posts) Recruitment Rules, 1996—Appointment—Post of Director, CBI—Appointment of junior officer ignoring the senior—Appointment questioned as violative of directions given by Supreme Court in Vineet Narain’s case and as approved by Parliamentary Act—Tribunal held that the appointment*
D *not in accordance with the directions—On appeal held: Appointment not justified—Procedure in the Rules inconsistent with the directions—Directions having been approved by Parliamentary Act and the same having laid down the procedure for appointment, the Rules would not survive—However, no relief granted since the aggrieved as well as the appointee have retired.*

E *Constitution of India, 1950—Article 136—Scope of the jurisdiction—Held, in exercise of the jurisdiction, Court cannot issue a writ of or in the nature of mandamus.*

A panel was prepared for promotion to the post of Director, CBI. Respondent No.1 though was the senior-most officer, was not included in the panel. Respondent No.6 was appointed to the post. Respondent No.1 challenged the appointment in Central Administrative Tribunal alleging that the appointment was done ignoring his case and that the procedure of the same was in violation of directions of Supreme Court for appointment of Director, CBI in *Vineet Narain and Ors. v. Union of India and Anr.*, [1998] 1 SCC 226.
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G Tribunal allowed the application quashing the appointment and directing initiation of fresh process of selection in the light of the Court’s direction. In writ petition, High Court, by majority held against respondent No. 1.

In appeal to this Court appellant-State contended that C.B.I. (Senior Police Posts) Recruitment Rules, 1996 framed under constitutional provision,

having not been declared invalid, the provisions thereof were required to be complied with and the same can co-exist with the directions of the Court, hence both should be given effect to; that the directions have been approved by legislature by promulgation of Central Vigilance Commission Ordinance, 1998 (later enacted by Parliament as Central Vigilance Commission Act, 2003) amending Delhi Special Police Establishment Act, 1946 by substituting Section 4 and inserting Section 4A. A
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Respondent No. 1 contended that despite the fact that he had retired from service, the Court should direct that he be promoted to the post of Director, CBI with retrospective effect so that he gets consequential retiral benefits. C

Disposing of the appeals, the Court

HELD: 1.1. The procedure laid down in the C.B.I. (Senior Police Posts) Recruitment Rules, 1996 is inconsistent with the directions issued by this Court in *Vineet Narain* case. The said directions were issued pending legislation in this behalf by the Parliament. Once by reason of a Parliamentary Act, the procedure for appointment of the Director, CBI has been laid down, the 1996 Rules would not survive. [478-D-F] D

Vineet Narain and Ors. v. Union of India and Anr., [1998] 1 SCC 226, referred to.

1.2. First respondent as also R-6 have retired. Therefore no relief in favour of the first respondent, as prayed for by him, can be granted as for all intent and purpose the directions issued by the Tribunal have been rendered infructuous. This Court cannot in exercise of its jurisdiction under Article 136 of the Constitution of India, issue a writ of or in the nature of mandamus directing Union of India to appoint the first respondent as Director, CBI with retrospective effect. Moreover, the first respondent was never empanelled and, therefore, no question for issuing direction as regards to his appointment to the post of Director could arise. [479-D-F] E
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2. In the interest of justice, it is clarified as regards seniority of the officers who are eligible for consideration therefor to the effect that ordinarily all the IPS officers of the senior-most four batches in service on the date of retirement of CBI Director, irrespective of their empanelment shall be eligible for consideration for appointment to the post of Director, CBI. The clarification would not lead the Committee to consider the cases of a large number of officers unnecessarily and further would act as an insulation to G
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A the possible misuse or arbitrary exercise of the power of the concerned authority. Therefore, it is directed that as regards seniority mentioned in Section 4A of Delhi Police Establishment Act, 1946 ordinarily all the IPS Officers of the senior-most four batches in the service on the date of retirement of CBI Director, irrespective of their empanelment, shall be eligible for consideration for appointment to the post of Director, CBI. This direction is in the nature of explanation to Section 4A of the Act. [479-A-C]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4303 of 2002.

C From the Judgment and Order dated 11.10.2001 of the Karnataka High Court in W.P. No. 5765 of 2001 (S. CAT)

Soli J. Sorabjee, Attorney General, Dhruv Mehta and P. Parmeswaran for the Appellants.

Respondent-In-person

D The Judgment of the Court was delivered by

E V.N. KHARE, CJ. Union of India herein is in appeal before us being aggrieved by and dissatisfied with the judgment and order dated 11.10.2001 passed by the Karnataka High Court in Writ Petition No.5765 of 2001 whereby the High Court has affirmed the order dated 8.2.2001 passed by the Central Administrative Tribunal, Bangalore Bench in O.A. No.1020 of 1999.

F The first respondent herein was a member of the Indian Police Service (IPS) of 1963 batch. He although was said to be one of the senior-most officers for the purpose of consideration of his claim for promotion to the post of Director, Central Bureau of Investigation (CBI), ignoring his case, Shri R.K. Raghavan, Respondent No.6 herein was appointed therein. Questioning the said appointment as also the procedure adopted by the Committee being violative of the directions of this Court for appointment of Director, CBI in *Vineet Narain and Ors. v. Union of India Anr.*, [1998] 1 SCC 226, the first respondent filed an original application before the Tribunal.

G The Committee constituted for the aforementioned purpose was required to draw a panel of IPS officers on the basis of their seniority, integrity and experience in investigation and anti-corruption work. Final selection, however, was to be made by the Appointment Committee of the Cabinet (ACC) from the panel recommended by the Committee. The name of the first respondent herein was admittedly not included in the panel prepared by the appellant

herein for the purpose of consideration of his case for promotion to the post of Director, CBI. The panel of IPS officers which was placed before the Committee for its consideration consisted names of 33 IPS officers, out of which 17 officers did not have the requisite background or experience in anti-corruption activities. Out of the remaining 16 officers, a panel of three names was prepared by the Committee. The first respondent questioned the selection process adopted by the Central Government as regard empanelment of the so-called eligible officers, *inter alia*, on the ground that the same was contrary to and inconsistent with the directions of this Court in *Vineet Narain's* case (supra). The stand of the Central Government, however, was that such a procedure was supplemental to the directions of this Court which had already been in existence for appointment to the post of Director of CBI as on the date of the judgment thereof, namely, 18.12.1997. The said stand was taken purported to be relying on or on the basis of doctrine of *sub silentio*, to which this Court in *Vineet Narain* (supra) apparently did not advert.

The question which, *inter alia*, arose for consideration before the Central Administrative Tribunal (Tribunal) was as to whether directions issued by this Court in *Vineet Narain* (supra) were required to be complied with rigidly till such time, the legislature steps in and substitutes the same by an appropriate legislation.

The Tribunal allowed the original application filed by the first respondent herein quashing the appointment of the seventh respondent and directing initiation of a fresh process of selection in the light of the decision of this Court in *Vineet Narain* (supra), holding that statutory rules or executive instructions pertaining to the post of Director, CBI could not be resorted therefor. The judgment and order of the Tribunal came to be questioned by the appellant herein by filing a writ petition before the Karnataka High Court which was marked as Writ Petition No. 5765 of 2001. The first respondent herein also filed a writ petition questioning some findings arrived at by the Tribunal which was marked as Writ Petition No. 6361 of 2001.

The matter came up for hearing before a Division Bench of the High Court comprising Ashok Bhan, J. (as His Lordship then was) and Chidananda Ullal, J. The learned Judges differed in their opinion while delivering an order dated 8.2.2001. Whereas Bhan, J. held that the appointment of the 6th Respondent herein as Director of CBI was in accordance with the rules and the directions issued by this Court as also Official Memorandum dated 20.5.1998; Ullal, J. held contra. Having regard to the difference of opinion

A between two learned Judges of the Karnataka High Court, the matter ultimately was placed before a third Judge, by Hon'ble the Chief Justice of Karnataka High Court. The learned Judge in terms of his judgment dated 11.10.2001 agreed with the view of Justice Ullal although for different reasons.

B Mr. Soli J. Sorabjee, learned Attorney General, appearing on behalf of the appellants, assailed the impugned majority decision of the High Court, *inter alia*, contending that the first respondent herein did not question the applicability of the C.B.I. (Senior Police Posts) Recruitment Rules, 1996 (hereinafter referred to as 'the 1996 Rules') and filed the original application primarily on the ground that he had not been appointed on extraneous reasons, despite his empanelment as Director General of Police (DGP) at the Centre, which plea was found to be not correct. The learned Attorney General contended that the 1996 Rules which were framed under Proviso to Article 309 of the Constitution of India specifically provided for the grade from which promotion/deputation/transfer to the post of Director, CBI was to be made from amongst the officers who had been approved for appointment as DGP under the Government of India and, thus, the observations of the Tribunal as also the majority decision of the High Court to the effect that the directions of this Court regulating the appointment of the CBI Director must be construed as being limited to the subsequent stages of selection from amongst the IPS Officers who had already been empanelled for the post of DGP at the Centre by the concerned Selection Committee is erroneous. According to the learned Attorney General, the directions of this Court should have been construed as an additional step in the process of selection of the Director of CBI with a view to insulate the sensitive post from political interference.

F Mr. Sorabjee submitted that the rules framed under the constitutional provisions having not been declared invalid, the provisions thereof were required to be complied with and in any event as the provisions thereof can co-exist with the directions of this Court in *Vineet Narain* (supra); both should be given effect to.

G The learned Attorney General also urged that the third Hon'ble Judge committed an error in concurring with the opinion of Ullal, J. for additional reasons that such requirement has been approved by the legislature in the form of Central Vigilance Commission Ordinance, 1998 which was promulgated by the President of India amending Delhi Special Police Establishment Act, 1946 by substituting Section 4 and inserting Section 4A therein as thereby directions of this Court were mainly sought to be implemented; and as even

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in terms thereof the 1996 Rules were not superseded expressly. A

The First Respondent herein who appeared in person had drawn our attention to the interim orders passed by the High Court as also this Court and submitted that despite the fact that he had retired from service, this Court should direct that he be promoted to the post of Director, CBI with retrospective effect so that he may get the consequential retiral benefits. B

Mr. Dinakar urged that this Court in *Vineet Narain* (supra) had highlighted that CBI had not been functioning properly necessitating constitution of an Independent Review Committee (IRC). Had it been the intention of this Court in *Vineet Narain* (supra) that the procedure laid down in the 1996 Rules should be followed, it would not have directed that the matter be considered by an independent committee which was not contemplated under the 1996 Rules. He furthermore urged that in that view of the matter, it would not be incorrect to invoke the doctrine of '*sub silentio*' in *Vineet Narain* (supra). C

Vineet Narain (supra) arose out of a writ petition filed before this Court under Article 32 of the Constitution of India as a public interest litigation. This Court since the initiation of the writ proceedings which took place in 1993 had passed several orders relating to the functioning of the CBI and other Government agencies, which according to this Court had not carried out their public duties to investigate the offences disclosed by taking recourse to doctrine of continuous mandamus. It was observed : D

“...The constitution and working of the investigating agencies revealed the lacuna of its inability to perform whenever powerful persons were involved. For this reason, a close examination of the constitution of these agencies and their control assumes significance. No doubt, the overall control of the agencies and responsibility of their functioning has to be in the executive, but then a scheme giving the needed insulation from extraneous influences even of the controlling executive is imperative...” E

This Court noticed the relevant rules as also the functioning of IRC but despite the same considered the need for court's intervention in para 26 and history of CBI in para 30, the validity of Directive No.4.7(3) of the Single Directive as also the power of this Court under Articles 32 and 142 of the Constitution of India stating : F

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A “There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mandate to all authorities to act in aid of the orders of this Court as provided in Article 144 of the Constitution. In a catena of decisions of this Court, this power has been recognised and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role...”

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C Noticing that this Court in exercise of its power under Article 32 read with Article 142 of the Constitution of India had issued guidelines and directions in a large number of cases, it was held that the directions which were enumerated therein required rigid compliance till such time the legislature steps in to substitute them by appropriate legislation. The requisite directions were thereafter issued which are contained in para 58 of the reported judgment.

D The High Court in its impugned judgment noticed that the appointment to the post of CBI can be made by way of transfer or deputation from amongst the officers of IPS who have been approved for appointment as DGP under the Government of India as regulated in terms of IPS Rules. The High Court further noticed that the Central Government issued an official memorandum after *Vineet Narain* (supra) which is to the following effect :

E “The Selection Board shall make recommendations/decide matters strictly in accordance with the relevant rules, policy and guidelines having a bearing on the matter concerned. Recommendations regarding deviations from established policy, practices and guidelines require to be specifically brought to the notice of the ACC, giving reasons therefor. The decisions of the CBI Selection Board which involve relaxation of relevant rules, policy and guidelines shall be only recommendatory.”

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G Taking note of the promulgation of the Ordinance by the President of India known as ‘the Central Vigilance Commission Ordinance, 1998 which came into force on or about 25.8.1998, the High Court observed that the directions of this Court were issued with the express object of providing a scheme to insulate the investigating agencies from extraneous influences of the executive, which reveals that this Court had issued directions having carefully and thoroughly examined the entire structure and mode of functioning of the CBI and felt need to improve and innovate the procedure and fructify
H the new ideas for betterment of the polity.

It is not in dispute that on the basis of the judgment in *Vineet Narain* (supra) the appellant did intervene by promulgation of the aforementioned Ordinance and, thus, a subordinate legislation in the form of the 1996 Rules would cease to exist as the Ordinance provides for the process of selection to the post of Director, CBI.

It is not in dispute that the Parliament had since given its approval to the said Ordinance enacting the Central Vigilance Commission Act, 2003, which received the assent of the President of India on 11.9.2003. By reason of Section 26 of the said Act, the Delhi Special Police Establishment Act, 1946 was amended which is to the following effect :

“26. In the Delhi Special Police Establishment Act, 1946, -

(a) after section 1, the following section shall be inserted, namely :-

“1A. Words and expressions used herein and not defined but defined in the Central Vigilance Commission Act, 2003, shall have the meanings, respectively, assigned to them in that Act”;

(b) for section 4, the following sections shall be substituted, namely:-

“4(1) The superintendence of the Delhi Special Police Establishment in so far as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988, shall vest in the Commission.

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

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

4A.(1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of -

(a) the Central Vigilance Commissioner - Chairperson;

(b) Vigilance Commissioners - Members;

- A (c) Secretary to the Government of India
in-charge of the Ministry of Home
Affairs in the Central Government - Member;
- (d) Secretary (Coordination and Public
Grievances) in the Cabinet
Secretariat - Member.

(2) While making any recommendation under sub-section (1), the Committee shall take into consideration the views of the outgoing Director.

- C (3) The Committee shall recommend a panel of officers
- (a) on the basis of seniority, integrity and experience in the investigation of anti-corruption cases; and
- (b) chosen from amongst officers belonging to the Indian Police Service constituted under the All-India Services Act, 1951
- D for being considered for appointment as the Director.”

From the above it is clear that the procedure laid down in the Rules is inconsistent with the directions issued by this Court in *Vineet Narain* (supra). As noticed hereinbefore, the said directions were issued pending legislation in this behalf by the Parliament. Once by reason of a Parliamentary Act, the procedure for appointment of the Director, CBI has been laid down, it is idle to contend that the 1996 Rules would still survive. The composition of the Committee for the purpose of preparation of panel has been laid down in sub-section (1) of Section 4A. While making the recommendation by preparing a panel of officers, the Committee is not only to take into consideration the views of the outgoing Director but the same would also be based on clauses (a) and (b) of sub-section (3) of Section 4A of the Act.

However, it commends to us that if in terms of Section 4A of the Delhi Special Police Establishment Act, all the eligible IPS officers are required to be considered, the same may give rise to practical difficulties. It is not in dispute that the post of Director, CBI, is considered to be a superior post. It is a tenure post and on the expiry of the period specified therefor, the officer may be transferred to any other post or reverted to his own post. Seniority although is a criteria but merit indisputably would play a decisive role which is required to be determined with other relevant considerations, namely, integrity and experience in the investigation in anti-corruption cases.

We, therefore, feel that in the interest of justice, a clarification is required to be issued as regard seniority of the officers who are eligible for consideration therefor to the effect that ordinarily all the IPS officers of the senior-most four batches in service on the date of retirement of CBI Director, irrespective of their empanelment shall be eligible for consideration for appointment to the post of Director, CBI. The aforementioned clarification, in our considered opinion, would not lead the Committee to consider the cases of a large number of officers unnecessarily and further would act as an insulation to the possible misuse or arbitrary exercise of the power of the concerned authority. We, therefore, direct that as regards seniority mentioned in Section 4A of the Act, ordinarily all the IPS Officers of the senior-most four batches in the service on the date of retirement of CBI Director, irrespective of their empanelment, shall be eligible for consideration for appointment to the post of Director, CBI. This direction is in the nature of explanation to Section 4A of the Act. Learned Attorney General consented to the said direction.

Coming to the question as to what relief(s) the first respondent is entitled to, we find that the first respondent as also Shri Raghavan have retired. We are, therefore, of the opinion that no relief in favour of the first respondent, as prayed for by him, can be granted as for all intent and purpose the directions issued by the Tribunal have been rendered infructuous. This Court cannot in exercise of its jurisdiction under Article 136 of the Constitution of India, issue a writ of or in the nature of mandamus directing Union of India to appoint the first respondent as Director, CBI with retrospective effect. Moreover, the first respondent was never empanelled and, therefore, no question for issuing direction as regards to his appointment to the post of Director could arise. We, therefore, modify the order and judgment under appeal to the aforementioned extent.

With the aforesaid modification, the appeal stands disposed of. There shall be no order as to costs.

K.K.T.

Appeal disposed of.