

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) No. Of 2018
PUBLIC INTEREST LITIGATION

IN THE MATTER OF

COMMON CAUSE

.....PETITIONER

VERSUS

UNION OF INDIA AND OTHERS

.....RESPONDENTS

WITH
I.A. NO. _____ OF 2018
(APPLICATION FOR DIRECTION)

PAPER- BOOK
(FOR INDEX KINDLY SEE INSIDE)

COUNSEL FOR THE PETITIONER: PRASHANT BHUSHAN

INDEX

RECORD OF PROCEEDINGS

SL.No.	Date of Record of Proceedings	Pages
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
15.		
16.		
17.		
18.		
19.		
20.		

S.N.	PARTICULARS OF DOCUMENTS	PAGE NO. OF PART TO WHICH IT BELONGS	
		(iii)	(iv)
1.	Court Fee		
2.	Listing Proforma	A1	A2
3.	Cover Page of Paper Book		A-3
4.	Index of Record of Proceedings		A-4
5.	Note Sheet		NS1 to
6.	Synopsis and list of dates	B-H	
7.	Writ Petition with Affidavit	1-36	
8.	Annexure P1: Copy of the order dated 23.10.2018 issued by the Central Vigilance Commission	37-41	
9.	Annexure P2: Copy of the order dated 23.10.2018 issued by the Appointment Committee of Cabinet	45-47	
10.	Annexure P3: Copy of detailed investigating report, dated 5.07.2018, published in www.savukkyonline.com against Mr. Rao	48-59	
11.	Annexure P4: A copy of the press release dated 02.12.2016 regarding the appointment of Respondent No. 4	60	
12.	Annexure P5: A copy of the order dated 16.12.2016 passed by this Hon'ble Court in Writ Petition 984 of 2016	61-62	
13.	Annexure P6: A copy of the order 20.01.2017 passed by this Hon'ble Court in Writ Petition 984 of 2016	63	
14.	Annexure P7: A copy of the order passed by this Hon'ble Court in W.P.	64-77	

	(Civil) No 1088/2017 dated 28.11.2017		
15.	Annexure P8: A copy of the order passed in Review Petition (C) No.28/2018 by this Hon'ble Court dated 23.01.2018	78	
16.	Annexure P9: A copy of a few pages from "Diary 2011" dated NIL received from a reliable whistleblower by the counsel of the petitioner along with its typed copy	79-81	
17.	Annexure P10: A copy of the summary of the said Appraisal Report dated 29.09.2016	90-103	
14.	Annexure P11: A copy of the FIR dated 30.08.2017	104-114	
18.	Annexure P12: A copy of the FIR dated 25.10.2017	115-125	
19.	Annexure P13: A copy of the profile of Mr. AnkushAsthana, son of Respondent No.2 on the webpage of popular business and employment website www.linkedin.com showing that he was working with Sterling Biotech	126-129	
20.	Annexure P14: A copy of the profile of Mr.AnkushAsthana on the webpage of another website www.bayt.com	130-131	
21.	Annexure P15: A copy of the passports of Mr.AnkushAsthana	131A	
22.	Annexure P16: A copy of the newspaper Gujarat Samachar dated 04.11.2017	132	
23.	Annexure P17: A copy of the new paper report published in Indian Express dated 23.10.2018	133-134	

24.	Annexure P18: A excerpt from the CBI investigation in regard to Respondent No.4	135-112	
25.	Annexure P19: A copy of the Minutes of Meeting of CBI selection Committee dated 21.10.2017	143-145	
26.	Annexure P20: A copy of the letter written by AIG (Policy) CBI dated 10.07.2018	146	
27.	Annexure P21: A copy of the press note release by CBI dated 22.09.2018	147-119	
28.	Annexure P22: A copy of the FIR lodged by the CBI against Respondent No.4 dated 15.10.2018	150-160	
29.	Annexure P23: A copy of the press release issued by CBI dated 22.10.2018	161-162	
30.	Annexure P24: A copy of the new report published in Times of India dated 22.10.2018	163-164	
31.	Annexure P25: A copy of the new report published in MidDay dated 22.10.2018	165	
32.	Annexure P26: A copy of the order dated 24.10.2018	166	
33.	Annexure P27: A copy of the order dated 24.10.2018	167	
34.	Application for Direction	168-169	
35.	Filing Memo		170
36.	Vakalatnama		171

A

PROFORMA FOR FIRST LISTING

SECTION: PIL

The case pertains to (Please tick/check the correct box):

☐ Central Act: (Title)☐ Section☐ Central Rule : (Title)☐ Rule No(s):☐ State Act: (Title)☐ Section :☐ State Rule : (Title)☐ Rule No(s):☐ Impugned Interim Order:
(Date)☐ Impugned Final Order/Decree: (Date)☐ High Court : (Name)☐ Names of Judges:☐ Tribunal/Authority ; (Name)1. Nature of matter : Y ☐ Civil

2. (a) Petitioner/appellant No.1 :

(b) e-mail ID:

(c) Mobile Phone Number:

3. (a) Respondent No.1:

(b) e-mail ID:

(c) Mobile Phone Number:

4. (a) Main category classification:

(b) Sub classification:

5. Not to be listed before:

6. Similar/Pending matter:

7. **Criminal Matters:**(a) Whether accused/convict has surrendered: Yes ☐ No ☐

(b) FIR No. _____ Date:

(c) Police Station:

(d) Sentence Awarded:

(e) Sentence Undergone:

**CONSTITUTION OF INDIA
UNDER ARTICLE 14 AND 21**

- NA -

- NA -

- NA -

- NA -

- NA -

- NA -

- NA -

- NA -

- NA -

- NA -

- NA -

☐ Criminal**COMMON CAUSE**

- NA -

- NA -

UNION OF INDIA & ORS

- NA -

- NA -

- 08 (0812)

OTHER PIL MATTER

- NA -

NO SIMILAR MATTER IS PENDING

A1

8. Land Acquisition Matters: - NA -
(a) Date of Section 4 notification: - NA -
(b) Date of Section 6 notification: - NA -
(c) Date of Section 17 notification: - NA -
9. Tax Matters: State the tax effect: - NA -
10. Special Category (first Petitioner/
appellant only): - NA -
☐ Senior citizen > 65 years ☐ SC/S ☐ Woman/child ☐ Disabled
☐ Legal Aid case ☐ In custody - NA -
11. Vehicle Number (in case of Motor Accident Claim matters):
12. Decided cases with citation:

(PRASHANT BHUSHAN)

Counsel for Petitioner
REGISTRATION No. 515
prashantbhush@gmail.com

Date: 25.10.2018

SYNOPSIS AND LIST OF DATES

The present petition highlights how the Government through its brazen interference has attempted to subvert the premier investigating institution of this country. The instant writ petition is being filed in public interest for the enforcement of fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India. The Petitioner by way of the present Public Interest Litigation is seeking quashing of the order dated 23.10.2018, issued by the Central Vigilance Commission, vide which the incumbent Director of Central Bureau of Investigation, Mr. Alok Verma has been illegally divested of all the work related to the Director, CBI for malafide reasons. The Petitioner is also seeking quashing of the order dated 23.10.2018, issued by the Appointment Committee of Cabinet, vide which Mr. Nageshwar Rao, Joint Director CBI has been handed over the charge of the Director CBI in gross violation of the law regarding selection of the Director, CBI. The petition also seeks a direction for the removal of CBI's Special Director Mr. Rakesh Asthana from the CBI in light of serious corruption cases pending against him in order to ensure institutional integrity. The Petition also seeks constitution of a Special Investigating Team to look into the recent unprecedented events which have unfolded in past few days and also to investigate the allegations of corruption against the senior officials of the CBI and submit the report before this Hon'ble Court for the consequent action thereupon.

DATE**PARTICULARS**

- 1946 Central Bureau of Investigation (CBI) was established under the Delhi Special Police Establishment Act (DSPE), 1946 which is the premier investigation agency in the country. It investigates corruption related offences connected with the Central Government, State Government and in certain cases violation of Human Rights.
- 1984 Respondent No. 2 Mr. Rakesh Asthana, was appointed as IPS in Gujrat. During his tenure he has held various posts including Additional Director in the CBI in April 2016 and also several important positions in Gujarat Police, i.e. Commissioner of Police, Surat City; Commissioner of Police, Vadodara City; Joint Commissioner of Police, Ahmedabad City; and IGP, Vadodara Range. He was also part of SIT set up by the Gujarat Government to probe the Godhra train burning case.
- 1998 This Hon'ble Court in the landmark judgment in *Vineet Narain* (1998 1 SCC 226) directed that the selection of posts up to the post of Joint Director shall be decided by a Board comprising CVC, Home Secretary, Secretary (Personnel) based on the inputs from the Director, CBI. Further, an approval shall be received from the Appointments Committee of the Cabinet (ACC).
- 2003 To give statutory effect to the abovementioned directions given in the *Vineet Narain* case, the Delhi Special Police Establishment (DSPE) Act, 1946 was amended in 2003, vide the Central Vigilance Commission (CVC) Act, 2003 to include that the Director CBI and officers above the post of SP shall be appointed by the Central Government on the recommendations of the Central Vigilance Commissioner, the Vigilance Commissioners and two

Secretaries to the Government of India.

- 14.02.2007 DoPT vide its O.M. No. 11012/11/2007-Estt.A dated 14.02.2007 issued that *"the vigilance status must be placed before and considered by the Competent Authority before a decision is taken."* with respect to any empanelment, deputation, and appointment to sensitive posts.
- 28.06.2011 Income Tax Department conducted a search and seizure under Section 132 of the Income Tax Act covering 25 premises of Gujarat-based Sterling Biotech and Sandesara Group of Companies at Mumbai, Vadodara and Ooty. During the raid certain incriminating documentary evidences including a Diary of 2011 was also recovered which contained hand-written record of certain transactions of the group for the period of 01.01.2011 to 28.06.2011. The name of Respondent No. 4 appears at several places in the said "Diary 2011". An entry also indicates an alleged payment of about 3.88 Crores to Respondent No.4.
- 16.01.2014 Selection process was further strengthened by way of Lokpal Act, 2013, which has been brought into force vide notification dated 16.01.2014. Section 4A of the Delhi Special Police Establishment Act was further amended and a high powered selection committee for the purpose of appointment to the post of Director CBI substituted the earlier committee. CBI Director is now appointed on the basis of a recommendation of a committee of the Chief Justice of India, the Prime Minister and the Leader of Opposition, thus further insulating his appointment from the government of the day.
- September, 2016 Income Tax Department prepared an Appraisal Report on the raid conducted on Sterling Biotech and Sandesara Group of Companies.

- December 2016 The government gave the charge of interim CBI Director to Respondent No. 4 in a completely *mala fide*, arbitrary and illegal manner by transferring his senior Mr. R.K. Dutta out of CBI to the Ministry of Home Affairs, just two days before the incumbent CBI Director was slated to demit office. A post of Special Secretary was specially created in the Ministry to accommodate Mr. Dutta by upgrading the post of a Joint Secretary, which is two levels below the Special Secretary, since the Government clearly wanted him out of the CBI and Respondent No.4 was appointed as interim CBI Director.
- 16.12.2016 The petitioner herein filed a writ petition in this Hon'ble Court viz. Writ Petition (Civil) No. 984 of 2016 challenging the appointment of Respondent No. 2 as the Acting/Interim Director, CBI and for direction to the government to appoint a full-term director of CBI consonant with the procedure established in the DSPE Act, 1946. This Hon'ble Court *vide* orders dated 16.12.2016 recorded the submission of the Attorney General of India that the Government would be appointing a full time director of the CBI soon.
- 20.01.2017 The petition was taken up on 20.01.2017 wherein this Hon'ble Court observed that since a regular director of CBI had been appointed on 19.01.2017, therefore nothing survived in the writ petition and the same was accordingly closed.
- 30.08.2017 The CBI's Delhi unit registered an FIR under the Prevention of Corruption Act, 1988 against three senior Income-Tax officials for allegedly accepting bribes from Gujarat-based Sterling Biotech and Sandesara Group of Companies. As per the FIR, a "Diary 2011" was found from the company premises during a raid, which detailed the monthly payout details to the accused income tax officials and several

police officials and politicians in Gujarat.

- 21.10.2017 A meeting of the selection committee was chaired by CVC Mr. KV Chowdary and attended by two Vigilance Commissioners, the Secretaries of Home Ministry and DoPT and the Director, CBI. The meeting had an agenda for the promotion of Respondent No. 2. Reportedly, the CBI Director had objected to the promotion of Respondent No. 2 and had also given a sealed cover on the status of the ongoing investigation that involved and named Respondent No. 4.
- That the proposal of appointment of Respondent No. 4 was objected by the committee headed by the CVC in its meeting since his name had appeared in "Diary 2011" which was the subject matter of the investigation of the CBI.
- 22.10.2017 That the Respondent No.4 was appointed as the Special Director, CBI.
- 04.11.2017 Respondent No.4's daughter marriage was solemnized over two days in 2016 at several five star venues i.e. The Laxmi Vilas Palace, Hotel Express Towers, Suncity Club and Resort and Surya Palace Hotel, which were made available to them on "complimentary" basis.
- 28.11.2017 That the petitioner herein filed W.P. (Civil) No 1088/2017 namely *Common Cause v Union of India & Ors*, before this Hon'ble Court challenging only the appointment of the Respondent No 4 as Special Director CBI, which came to be dismissed vide Order dated 28.11.2017.
- 23.01.2018 Further a Review Petition © No.28/2018 was filed challenging the order of this court passed in W.P. (Civil) No 1088/2017. However, the same was dismissed pertinent therein.
- 27.03.2018 That the curative petition has been filed by the

petitioner and the same is pending consideration before this Court.

- 05.07.2018 The online investigation report published on www.savukkyonline.com enumerates various lapses and instances of unprofessional conduct on the part of Mr. Nageshwar Rao which merits further investigation. As per the report, Mr. Alok Verma had apparently ordered a discreet enquiry against Mr. Rao, when he was posted as Joint Director, Chennai Zone, CBI and had ordered transfer of the investigation of important cases from Chennai Zone of CBI to Banking and Securities Fraud Cell of Bengaluru.
- 10.07.2018 That the Respondent No 4 has attempted to influence the decisions of the selection committee and seek appointment of officers having investigations pending on account of serious allegations of misconduct.
- 22.09.2018 CBI in its one of the press statement stated that Respondent No.4 is facing probes in at least half a dozen cases
- 05.10.2018 Mr. Alok Verma met the complainants who had submitted a detailed 132-page complaint relating to purchase of Rafale aircrafts. The complainants have sought the registration of FIR and investigation into the said deal. The said complaint made the specific charges, under the Prevention of Corruption Act, against the top political leaders in the present government. Media reports suggest that the fact that the CBI, Director met the said complainants had not gone well with the government.
- 15.10.2018 A complaint was received by the CBI from Shri. Sathish Babu Sana, alleging payments of bribes to Mr. Asthana and other named officials. On the basis of the said complaint, an FIR under S. 7 and S. 13 (1) (d) and section 7A of the Prevention of Corruption Act was lodged. Mr. Asthana has been named as the

main accused in the said FIR.

- 22.10.2018 That the CBI issued a press release vide which they clarified that the allegations are made out against the public servants of the CBI, namely Respondent No.4 Shri Rakesh Asthana, Special Director and others. Also, CBI arrested its Deputy Superintendent of Police Devender Kumar in connection with bribery allegations involving Rakesh Asthana herein Respondent No.4. DSP Devender Kumar who was earlier the investigation officer in a case involving meat exporter Moin Qureshi, has been arrested on the allegations of forgery in recording the statement of Sathish Sana, who had allegedly paid bribes to get relief in that case to Respondent No.4. Mr. Kumar had allegedly fabricated this statement as an afterthought to corroborate the allegations made by Asthana against the CBI Director Alok Verma to the Central Vigilance Commissioner.
- 23.10.2018 Vide order dated 23.10.2018, issued by the Central Vigilance Commission, the incumbent Director CBI, Mr. Alok Verma has been divested of all the work related to the Director, CBI. Further, vide another order dated 23.10.2018, issued by the Appointment Committee of Cabinet vide which Mr. Nageshwar Rao, Joint Director CBI has been handed over the charge of Director CBI.
- 24.10.2018 That an officer who was investigating the case against Respondent No.4 have been transferred to Port Blair with immediate effect in a completely mala fide manner. Also, the whole team working under the CBI Director has been transferred out of Delhi with immediate effect.
- 25.10.2018 Hence, the present writ petition.

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) No. OF 2018
PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

COMMON CAUSE
(A REGISTERED SOCIETY)
THROUGH ITS DIRECTOR
MR. VIPUL MUDGAL

... THE PETITIONER

VERSUS

1. UNION OF INDIA
THROUGH ITS CABINET SECRETARY
GOVERNMENT OF INDIA
CABINET SECRETARIAT
NEW DELHI-110001

... RESPONDENT No. 1

2. CENTRAL BUREAU OF INVESTIGATION
THROUGH ITS DIRECTOR
PLOT No. 5-B, 6TH FLOOR,
CGO COMPLEX, LODHI ROAD,
NEW DELHI-110003

... RESPONDENT No. 2

3. CENTRAL VIGILANCE COMMISSION
THROUGH CENTRAL VIGILANCE COMMISSIONER
SATARKTA BHAWAN, A- BLOCK
GPO COMPLEX, INA
NEW DELHI

.....RESPONDENT No. 3

4. MR. RAKESH ASTHANA
SPECIAL DIRECTOR
PLOT No. 5-B, 6TH FLOOR,
CGO COMPLEX, LODHI ROAD,
NEW DELHI-110003

... RESPONDENT No. 4

5. MR. ALOK VERMA

PLOT No. 5-B, 6TH FLOOR,
CGO COMPLEX, LODHI ROAD,
NEW DELHI-110003

... RESPONDENT No. 5

6. Mr. Nageshwar Rao,
Joint Director CBI
PLOT No. 5-B, 6TH FLOOR,
CGO COMPLEX, LODHI ROAD,
NEW DELHI-110003

... RESPONDENT No. 6

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA, FOR THE ENFORCEMENT OF THE RIGHTS OF THE CITIZENS UNDER ARTICLES 14 AND 21 OF THE CONSTITUTION OF INDIA, SEEKING QUASHING OF ORDERS DATED 23.10.2018 THAT TAKE AWAY WORK FROM THE CBI DIRECTOR AND ENTRUST THE SAME TO A TAINTED OFFICER. THE PETITION ALSO SEEKS A DIRECTION FOR THE REMOVAL OF RESPONDENT NO. 4 FROM THE CBI IN LIGHT OF SERIOUS CORRUPTION CASES PENDING AGAINST HIM IN ORDER TO ENSURE INSTITUTIONAL INTEGRITY

To,

**THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION
JUDGES OF THE HON'BLE SUPREME COURT OF INDIA**

The Humble Petition of the
Petitioners above-named

MOST RESPECTFULLY SHOWETH: -

1. That the present petition is being in public interest under Article 32 of the Constitution of India for the enforcement of fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India. This Petition highlights how the Government through its brazen interference has attempted to subvert the premier investigating institution of this country. The Petitioner by way of the present Public Interest Litigation is seeking quashing of the order dated 23.10.2018, issued by the Central Vigilance Commission, vide which the incumbent Director of Central Bureau of Investigation, Mr. Alok Verma

has been illegally divested of all the work related to the Director, CBI for malafide reasons. The Petitioner is also seeking quashing of the order dated 23.10.2018, issued by the Appointment Committee of Cabinet, vide which Mr. Nageshwar Rao, Joint Director CBI has been handed over the charge of the Director CBI in gross violation of the law regarding selection of the Director, CBI. The petition also seeks a direction for the removal of CBI's Special Director Mr. Rakesh Asthana from the CBI in light of serious corruption cases pending against him in order to ensure institutional integrity. The Petition also seeks constitution of a Special Investigating Team to look into the recent unprecedented events which have unfolded in past few days and also to investigate the allegations of corruption against the senior officials of the CBI and submit the report before this Hon'ble Court for the consequent action thereupon.

INTRODUCTION OF THE PETITIONER

- 1A. The Petitioner, Common Cause, is a registered society (No. S/11017) that was founded in 1980 by late Shri H. D. Shourie for the express purpose of ventilating the common problems of the people and securing their resolution. It has brought before this Hon'ble Court various Constitutional and other important issues and has established its reputation as a *bona fide* public interest organization fighting for an accountable, transparent and corruption-free system. Mr. Vipul Mudgal, Director of Common Cause, is authorized to file this PIL. The requisite Certificate & Authority Letter are filed along with the vakalatnama. The average annual income of the Petitioner Society for the last three financial years is approximately Rs. 1.03 crore.

(PAN number: AAXPM0305P). The Society does not have a UID number.

The petitioner organisation has no personal interest, or private/oblique motive in filing the instant petition. There is no civil, criminal, revenue or any litigation involving the petitioner organisation, which has or could have a legal nexus with the issues involved in the PIL.

The petitioner has not made any representations to the respondent in this regard because of the extreme urgency of the matter in issue.

That the instant writ petition is based on the information/documents which are in public domain.

THE CASE IN BRIEF

2. The Central Bureau of Investigation (CBI) established under the Delhi Special Police Establishment Act (DSPE), 1946 is the premier investigation agency in the country. It investigates corruption related offences connected with the Central Government, and under certain circumstances, also cases connected with State Government entities. This Hon'ble Court has time and again entrusted important cases of corruption and violation of human rights to the CBI for investigation. The CBI has, sometimes under the monitoring of this Hon'ble Court, investigated important cases involving powerful and influential individuals. The present case highlights how the Government through its brazen interference has attempting to subvert the institution of CBI.

ILLEGALITY IN WITHDRAWAL OF WORK OF DIRECTOR CBI FROM MR. ALOK VERMA, AS WELL AS IN HANDING OVER THE CHARGE OF DIRECTOR, CBI TO MR. NAGESHWAR RAO

3. That the Petitioner by way of the present PIL challenging the order dated 23.10.2018, issued by the Central Vigilance Commission vide which the incumbent Director CBI, Mr. Alok Verma has been divested of all the work related to the Director, CBI and also the order dated 23.10.2018, issued by the Appointment Committee of Cabinet, vide which Mr. Nageshwar Rao, Joint Director CBI has been handed over the charge of Director CBI. Copy of the order dated 23.10.2018 issued by the Central Vigilance Commission is annexed hereto as **Annexure P1** (page nos. 31 to 44). Copy of the order dated 23.10.2018 issued by the Appointment Committee of Cabinet is annexed hereto as **Annexure P2** (page nos. 45 to 47). Both the aforesaid orders are totally illegal as well as malafide.
4. This Hon'ble Court in **Vineet Narain & Ors v. UOI & Anr** (1998) 1 SCC 226, in order to insulate the CBI from the influence and control of the Central government, passed detailed directions. One of the directions was that the Director CBI will have a minimum tenure of two years. Mr. Alok Verma was appointed as Director CBI on 01.02.2017. His tenure was to expire on 31.01.2019.
5. The aforesaid judgment in Vineet Narain (supra) had also given directions regarding the selection of the Director CBI. In line with the aforesaid directions, a Central Vigilance Commission Act 2003 was enacted by the parliament and Section 26 of the CVC Act substituted Section 4 of the Delhi Special Police Establishment Act, 1946 (DSPE)

and added Section 4(A) and 4(B) which deal with appointment of Director as well as terms and conditions of service of Director. The provisions are extracted below:

*"Section 26. **Amendment of Act 25 of Act of 1946** – In the Delhi Special Police Establishment Act, 1946-*

...

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;*
- (c) Secretary to the Government of India incharge 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.

(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, for being considered for appointment as the Director.

4B. (1) The Director shall, notwithstanding anything to the contrary contained in the rules relating to his conditions of service, continue to hold office for a period of not less than two years from the date on which he assumes office.

(2) The Director shall not be transferred except with the previous consent of the Committee referred to in sub-section (1) of section 4A."

6. The aforesaid selection process was further strengthened by way of Lokpal Act, 2013, which has been brought into force vide notification

dated 16.01.2014. Section 4A of the Delhi Special Police Establishment Act was further amended by the Lokpal Act and the earlier committee to select Director CBI was substituted with a high powered committee. Amended Section 4 A is extracted below:

"PART II AMENDMENTS TO THE DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946 (25 OF 1946)

1. Amendment of section 4A.—In section 4A,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

(a) the Prime Minister—Chairperson;

(b) the Leader of Opposition in the House of the People—Member;

(c) the Chief Justice of India or Judge of the Supreme Court nominated by him—Member.";

(ii) sub-section (2) shall be omitted."

7. In view of the aforementioned latest provisions regarding selection of the Director CBI, Director CBI shall be appointed by the Central Government on the recommendation of the Committee consisting of

-Prime Minister as chairperson

- Leader of opposition in the House of People

- Chief Justice of India or judge of the Supreme Court nominated by him

As amended section 4 A (1) has substituted the earlier selection committee, therefore, Section 4 B (2) of the DSPE Act when it states that CBI Director can be transferred with consent of the committee referred to in Section 4 A (1) only, it mandates that no CBI Director

can be transferred, before expiry of his two year term, without consent of the committee as amended under the Lokpal Act. Even the withdrawal of the work from the Director CBI, which in effect would amount to transfer/removal only, cannot be done without the consent of the Committee as provided in amended Section 4 A.

Thus, in so far as both the aforementioned orders dated 23.10.2018 are concerned, which in effect transfers/removes the Director CBI much before the completion of his two year fixed tenure, and appoints an interim Director CBI, they are in complete violation of the aforementioned legal framework for the appointment and well as transfer/removal of the Director CBI.

8. In so far as the reliance on Sections 8(1)(a) and 8(1)(b) of the CVC Act and Sections 4(1) & (2) of the DSPE Act for passing the aforesaid orders is concerned, the said reliance is totally misplaced. Section 8(1) (a) and (b) of the CVC Act provides;

"The functions and powers of the Commission shall be to-

- (a) Exercise superintendence over the functioning of the Delhi Special Police Establishment in so far as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 or an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973, 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, 1946;"

Section 4 (1) of the DSPE Act provides;

"The superintendence of the Delhi Police establishment in so far as it relates to investigation of offences alleged to have committed under the Prevention of Corruption Act, 1988 shall vest in the Commission."

And as per Section 4(2), in all other matters the superintendence shall vest in the Central Government.

The power of superintendence in the matter of investigation under Section 8 (1)(a) and (b) of the CVC Act and also Sections 4(1) of the DSPE Act does not empower the CVC to withdraw work from the CBI, Director on their own, even if some complaint of corruption has been made against him, and appoint an interim Director by ignoring the mandate under Section 4A(1) & 4B of the DSPE Act.

Similarly, power of superintendence under Section 4(2) of the Central Government does not allow them to bypass the mandatory provisions of Section 4A(1) & 4B of the DSPE Act.

9. Even if there is allegation of corruption against Mr. Alok Verma, as stated in the removal order, the CVC, in the guise of power of superintendence, could not have withdrawn the work from the Director CBI and handed over to a new officer without the consent of the committee referred to in amended Section 4A (1) of the DSPE Act. At the most, the complaint against Mr. Verma should have been

referred to the committee referred to in amended Section 4A (1) of the DSPE Act for the appropriate action.

It is apparent that the order withdrawing the work has been passed to frustrate the mandate of the Act since Mr. Verma could not have been removed before his fixed tenure without consulting the selection committee. The impugned orders make it apparent that the aforesaid decisions have been taken without consultation with the aforementioned selection committee as is mandated by the law. Neither Mr. Alok Verma could have been divested with the work nor could Mr. Nageshwar Rao have been asked to take over the charge of the Director CBI and function as interim Director without consulting the Selection Committee mentioned in amended Section 4 A of the DSPE Act.

THE IMPUGNED ORDERS ARE BAD AND LIABLE TO THE QUASHED AS THEY ARE ALSO ACTUATED FOR MALAFIDE REASONS

10. The chain of events shows that Mr. Alok Verma is being victimised for taking action against Mr. Rakesh Asthana, a Gujarat cadre officer and also for entertaining complaint against the top functionaries of the present government.

(I) Mr. Verma had raised objection, at the time of appointment of Mr. Rakesh Asthana as Special Director CBI, when he was consulted by the Appointment Committee of the Cabinet in October 2017. It appears Mr. Alok Verma, in his written objection vide letter dated 21.10.2017, had objected to the

appointment of Mr. Asthana as Special Director, on the ground that Mr. Asthana's name was also figuring in some of the corruption cases which were being investigated by the CBI itself.

(II) On 30.08.2017, the CBI's Delhi Unit registered an FIR against three senior income tax officials for allegedly accepting bribes from the Gujarat based Sterling Biotech and Sandesara Group of Companies. Apparently, these income tax officials, despite conducting a raid in 2011 in the premises of the Sandesara group and procuring a diary containing the details of daily financial dealings and cash transactions in favour of certain named individuals and public servants, had not taken any action against the persons named in the diary. Apparently, the said diary contains the name of Mr. Asthana also who at that point in time was posted as Police Commissioner at Surat.

(III) On 5.10.2018, Mr. Alok Verma met the complainants who had submitted a detailed 132-page complaint relating to purchase of Rafale aircrafts. The complainants have sought the registration of FIR and investigation into the said deal. The said complaint made the specific charges, under the Prevention of Corruption Act, against the top political leaders in the present government. Media reports suggest that the fact that the CBI, Director met the said complainants had not gone well with the government.

(IV) On 15.10.2018, a complaint was received by the CBI from Shri. Sathish Babu Sana, alleging payments of bribes to Mr.

Asthana and other named officials. On the basis of the said complaint, an FIR under S. 7 and S. 13 (1) (d) and section 7A of the Prevention of Corruption Act was lodged. Mr. Asthana has been named as the main accused in the said FIR.

(V) Immediately after the registration of the said FIR and arrest of an officer from the CBI in the said FIR, Mr. Asthana approaches the High Court of Delhi for quashing of the FIR, however, the Hon'ble High Court vide order dated 23.10.2018, though protected him from coercive steps, did not stop the investigation.

(VI) On that very night, in the late hours, the impugned orders are passed and works are withdrawn from Mr. Alok Verma and handed over to Mr. Nageswar Rao. The odd timing of the late midnight orders also confirms that they are made mala fide.

11. Apart from the fact that Mr. Nageswar Rao's appointment as acting director is bad in law, there is an online investigation report published on www.savukkyonline.com, which enumerates various lapses and instances of unprofessional conduct on the part of Mr. Nageswar Rao which merits further investigation. As per the report, Mr. Alok Verma had apparently ordered a discreet enquiry against Mr. Rao, when he was posted as Joint Director, Chennai Zone, CBI and had ordered transfer of the investigation of important cases from Chennai Zone of CBI to Banking and Securities Fraud Cell of Bengaluru. Copy of detailed investigating report, dated 5.07.2018, published

onwww.savukkyonline.com against Mr. Nageshwar Rao is annexed hereto as Annexure P3 (page 48 to 59).

BRIEF FACTS SEEKING REMOVAL OF MR. RAKESH ASTHANA AS SPECIAL DIRECTOR, CBI AND APPOINTMENT OF SIT FOR THE INVESTIGATION INTO THE CHARGES OF CORRUPTION AND CASES LODGED AGAINST HIM

12. Mr. Rakesh Asthana, IPS (GJ 1984 cadre) herein Respondent No. 4 is currently the Special Director in the CBI. Significantly, he has earlier held several important positions in Gujarat Police, e.g. Commissioner of Police, Surat City; Commissioner of Police, Vadodara City; Joint Commissioner of Police, Ahmedabad City; and IGP, Vadodara Range. He was part of the SIT set up by the Gujarat Government headed by the current Prime Minister to probe the Godhra train burning case. He is also associated with several high-profile and politically sensitive cases registered by the CBI. At the time of the raid on Sterling Biotech and Sandesara Group of Companies in Vadodara in June 2011, Respondent No. 4 was posted as Police Commissioner of Surat, Gujarat. After NDA government came to power in the Centre, Respondent No. 4 was inducted in CBI.
13. That in December 2016, when the then Director CBI superannuated, the government, in order to give the interim charge of CBI Director to Respondent No. 4, transferred his senior Mr. R.K. Dutta out of the CBI and appointed him as the acting/interim CBI Director. The Central Government had omitted to convene a meeting of the selection committee comprising the Prime Minister, the Leader of the largest Opposition party and the Chief Justice of India, even though it was

fully aware that the incumbent CBI Director Mr. Anil Sinha was going to demit his office on 02.12.2016. This deliberate dereliction was in complete violation of Section 4A of the DSPE Act, 1946. In order to accommodate Respondent No. 4, the Government at that time had prematurely curtailed the tenure of Mr. R K Dutta, Special Director, CBI, and transferred him to the Ministry of Home Affairs. Mr. R.K. Dutta was senior to Respondent No 3 in the CBI and Respondent No. 4 could not have been promoted to the post of Acting/Interim Director, CBI as long as Mr. R.K. Dutta was serving in the CBI.

14. The Government gave Respondent No. 4 an additional charge as the Interim/Acting Director of the CBI. Hence, for the first time in a decade, the CBI did not have a full time Director appointed as per the prescribed statutory procedure. A copy of the press release dated 02.12.2016 regarding the appointment of Respondent No. 4 as the Interim/Acting CBI Director is annexed as **Annexure P4** (page 60 to _____).

15. It is clear from the foregoing that even on an earlier occasion the Government wanted to appoint Respondent No. 4 as Interim CBI Director, even if it meant bypassing the statutory law the norms of propriety, and the directions contained in this Hon'ble Court's judgment in *Vineet Narain*.

16. A writ petition was filed in this Hon'ble Court viz. Writ Petition (Civil) No. 984 of 2016 challenging the appointment of Respondent No. 4 as the Acting/Interim Director, CBI and for direction to the government to appoint a full-term director of CBI consonant with the procedure established in the DSPE Act, 1946 and the judgment in *Vineet Narain* case. On the said petition, the Government stated in court that they

would be appointing a full time director of the CBI. This Hon'ble Court vide orders dated 16.12.2016 recorded the submission of the Attorney General of India that "*the process of appointment of regular Director to the CBI has been commenced and hopefully, the first meeting of the Committee will take place in the last week of December, 2016*". A copy of the order dated 16.12.2016 passed by this Hon'ble Court in Writ Petition 984 of 2016 is annexed herewith as **Annexure P5** (page 61 to 62).

17. The petition was taken up on 20.01.2017 wherein this Hon'ble Court observed that since a regular director of CBI had been appointed on 19.01.2017, therefore nothing survived in the writ petition and the same was accordingly closed. A copy of the order 20.01.2017 passed by this Hon'ble Court in Writ Petition 984 of 2016 is annexed herewith as **Annexure P6** (page 63 to -).

18. That Respondent No.4 was later appointed to the post of Special Director, Central Bureau of Investigation (CBI) on 22.10.2017 in an arbitrary, *mala fide* and in violation of the principle of impeccable integrity and institutional integrity as laid down by this Hon'ble Court despite strong objections by the Director CBI since he was himself the subject matter of investigation, as is shown later in this petition.

19. Therefore, another W.P. (Civil) No 1088/2017 namely *Common Cause v Union of India & Ors*, was filed before this Hon'ble Court challenging the appointment of the Respondent No 4 as Special Director CBI, which came to be dismissed vide Order dated 28.11.2017. A copy of the order passed by this Hon'ble Court in W.P. (Civil) No 1088/2017 dated 28.11.2017 is marked and annexed herewith as **Annexure P-7** (Pg 64-77).

20. Pertinent therein a Review Petition (C) No.28/2018 was filed challenging the order of this court passed in W.P. (Civil) No 1088/2017. However, the same was dismissed accordingly. A copy of the order passed in Review Petition (C) No.28/2018 by this Hon'ble Court dated 23.01.2018 marked and annexed herewith as **Annexure P-8**(Pg 28). It is also pertinent to mention here that a curative petition has been filed by the petitioner therein challenging the review order passed mentioned herein above, and the same is pending before this Court.

21. It is submitted that the instant Petition does not seek to agitate the same cause as was put forth before this Hon'ble Court in the earlier Writ Petition which led to the passing of the Order dated 28.11.2017 by this Hon'ble Court, since the present petition seeks his removal from CBI owing to subsequent developments, and does not challenge his appointment.

CASES PENDING AGAINST RESPONDENT NO.4

22. It is submitted that there are multiple investigations pending against the Respondent No 4, it is clear that the continuation of Respondent No 4 as the Special Director of CBI is improper, illegal and contrary to all principles of law, justice, public morality and has the effect of hampering with a free, independent, fearless and thorough investigation being carried out against the Respondent No 4 in multiple cases.

Diary 2011 and the FIRs registered by the CBI

- (I) On 28.06.2011, the Income Tax Department had conducted a search and seizure under Section 132 of the Income Tax Act covering 25 premises of Gujarat-based Sterling Biotech and Sandesara Group of Companies at Mumbai, Vadodara and Ooty. During the raid, certain incriminating documentary evidences were found and seized from the premises of the group at Mumbai and Vadodara. A Diary of 2011 was also recovered and seized by the Income Tax Department from the premises of the Sandesara Group at Vadodara containing a hand-written record of certain transactions of the group for the period of 01.01.2011 to 28.06.2011. The said Diary contained the details of daily financial dealings and cash transactions carried out by the group in favour of certain named individuals and public servants, including several senior officers of the Income Tax department. The name of Respondent No. 4 appears at several places in the said "Diary 2011". An entry also indicates an alleged payment of about 3.88 Crore. A copy of a few pages from "Diary 2011" dated NIL received from a reliable whistleblower by the counsel of the petitioner along with its typed copy is annexed herewith as **Annexure P9**(page 79 to 89).
- (II) In September 2016, the Income Tax Department prepared an Appraisal Report on the raid conducted on Sterling Biotech and Sandesara Group of Companies. A copy of the summary of the said Appraisal Report dated 29.09.2016 is annexed herewith as **Annexure P10** (page 90 to 103).

- (III) On 30.08.2017, the CBI's Delhi unit registered an FIR under the Prevention of Corruption Act, 1988 against three senior Income-Tax officials for allegedly accepting bribes from the Gujarat-based Sterling Biotech and Sandesara Group of Companies. At that time Respondent No.4 was working as Police Commissioner of Surat. As per the FIR, a "Diary 2011" was found from the company premises during a raid, which detailed the monthly payouts to the accused income tax officials and several police officials and politicians in Gujarat. The FIR states that, *"The Documents seized revealed that the Sandesara group has been acting as a depository for receiving funds on behalf of persons including public servants and for further delivery to them at the place of convenience. The evidence collected by the Income Tax Department showed corruption of various public servants including three senior IRS officers"*. A copy of the FIR dated 30.08.2017 is annexed herewith as **Annexure P11** (page 164 to 114).
- (IV) That on 25.10.2017, the CBI has registered an FIR against the Sandesara Group company Sterling Biotech Limited, its directors, Chartered Accountant and the then director of Andhra Bank for allegedly cheating public sector banks of Rupees 5,383 crore. The case has been registered under provisions of cheating, forgery of valuable security, forgery for the purpose of cheating, using forged documents as genuine, criminal conspiracy and criminal misconduct. Among those named are Sterling Biotech Limited, located in Gujarat's Vadodara, its directors Chetan Jayantilal Sandesara, Dipti

Chetan Sandesara, Rajbhushan Omprakash Dixit, Nitin Jayantilal Sandesara and Vilas Dattatray Joshi, besides chartered accountant Hemant Hathi, the then Andhra Bank Director Anup Garg and unknown private and public servants. The FIR alleges that the Sterling Biotech group companies availed of more than Rupees 5,000 crore in loans from Andhra Bank and other public sector banks, which turned non-performing assets. The CBI has alleged that the group was laundering money through a circuitous route and even indulged in insider trading. As part of the conspiracy, CBI has alleged, the Sandesaras were regularly supplying money to Andhra Bank director Anup Garg in Delhi through angarias (cash couriers). A copy of the FIR dated 25.10.2017 is annexed herewith as **Annexure P12** (page 115 to 125).

- (V) It is also pertinent to mention that the son of Respondent No. 2, Mr. Ankush Asthana had been in the employment of Sterling Biotech as Assistant Manager in the recent past between year 2010 and 2012. As per the FIR dated 25.10.2017, the said company was engaged in delivery of large payoffs etc, had opened 73 off shore entities and 151 benami companies in India to further their illegal operations. The name of Respondent No. 4 in the diary of payoffs of Sterling Biotech and his son's employment with the same Sterling Biotech indicates that Respondent No. 4 was allegedly receiving illegal gratification from a tainted company when he was the Police Commissioner till March 2016 and appointed as Additional Director in CBI in April 2016. A copy of the profile of Mr.

Ankush Asthana, son of Respondent No.2 on the webpage of popular business and employment website *www.linkedin.com* showing that he was working with Sterling Biotech is annexed herewith as **Annexure 13** (Pg 126-129).

A copy of the profile of Mr. Ankush Asthana on the webpage of another website *www.bayt.com* is annexed herewith as **Annexure 14** (Pg 130-131).

(VI) The petitioner's counsel has come in possession of the copy of the passports of Mr. Ankush Asthana, being number F0479383 (valid from 2004-2014) and renewed passport number K7678658 (valid from 2013-2023). The passports of Mr. Ankush Asthana show that his father's name is Mr. Rakesh Asthaana, which is none other than Respondent No. 4. A copy of the passports of Mr. Ankush Asthana is annexed as **Annexure 15** (Pg 131A).

(VII) That, it has come to light that on 24.11.2017 (a day before the wedding of the daughter of Respondent No. 4), a party function was held at Vadodra-based farmhouse of the Sandesaras. The wedding was held on 25.11.2017 at Lakshmi Niwas Palace in Vadodra. A report of the function titled "Party held for marriage ceremony of daughter of IPS Officer having close relations with Sterling Group" was published in newspaper Gujarat Samachar dated 04.11.2017. A copy of the newspaper Gujarat Samachar dated 04.11.2017 is annexed as **Annexure 16** (Pg 132).

(VIII) It is also pertinent to mention here that Respondent No.4's daughter marriage was solemnized over two days in 2016 at

several five star venues i.e. The Laxmi Vilas Palace, Hotel Express Towers, Suncity Club and Resort and Surya Palace Hotel, which were made available to them on "complimentary" basis. A copy of the new paper report published in Indian Express dated 23.10.2018 is annexed as **Annexure 17** (Pg ~~133-134~~) And also, excerpt from the CBI investigation on the same is annexed as **Annexure 18** (Pg ~~135-142~~)

- (IX) The opposition of the CBI Director to the proposal to promote Respondent No.4 to the post of Special Director, CBI on the issue of "integrity clause" pertained to the aforesaid FIR dated 30.08.2017 registered by the CBI. The CBI Director had also handed over to the selection committee a sealed envelope containing a 2-page note on the involvement of Respondent No.2 in the said case and the status of the relevant investigation. In the minutes of meeting of the selection committee, same is mentioned and is reproduced herein below:

"the Director CBI has furnished a secret/ confidential letter ID No. 30/2017/VC/(CVC)/152/1552 dated 21.10.2017 in the meeting, enclosing an unsigned note on Sterling Biotch Ltd. and related entities. It is mentioned that the entries in the note refer, inter alia, to one Shri Rakesh Asthana, the committee considered the note and the matter was also discussed with the Director, CBI."

A copy of the Minutes of Meeting of CBI selection Committee dated 21.10.2017 is annexed herewith as **Annexure P19** (page ~~143~~ to ~~145~~).

(X) It is also pertinent to mention here that the Respondent No 4 pushed the case for appointment of officers who were themselves the subject matter of investigation. A copy of the letter written by AIG (Policy) CBI dated 10.07.2018 is marked and annexed herewith as **Annexure P-20**(Pg 146).

(XI) Further, CBI in its one of the press statement stated that Respondent No.4 is facing probes in at least half a dozen cases. The relevant part of the press release is reproduced herein below:

"Certain allegations have been made in a newspaper published from New Delhi referring to a complaint filed before the Central Vigilance Commission against the Director CBI. The newspaper story has subsequently been carried in several electronic channels. It is unfortunate that baseless and frivolous allegations are being made publically without proper verification of facts to malign the image of the Director CBI and intimidate the officials of the organization.

It is stated that the CVC has sought for certain case files from the CBI on the basis of a complaint filed by the Special Director, CBI. In its response to the CVC letter, the Chief Vigilance Officer (CVO) of CBI has pointed out that the complaint is an attempt by the complainant to intimidate the officers of CBI who are investigating his role in at least half a dozen cases. The CBI said that the CVC should opine on the maintainability of the complaint and consider it malicious and frivolous in order to protect the integrity of the organisation"

A copy of the report on press note release by CBI dated 22.09.2018 is marked and annexed herewith as **Annexure P-21**(Pg 147-149).

RECENT FIR REGISTERED BY THE CBI

(XII) That the CBI registered an FIR against Respondent No.4 u/s 7 and 13(1)(d) and section 7A of Prevention of Corruption Act

dated 15.10.2018 for taking bribe for giving a clean cheat to an accused being investigated by the CBI. The relevant paragraph is reproduced herein below:

"...Sh. Somesh Prasad further told me that I will have to pay an amount of Rs 3 Crores as an advance and remaining amount of Rs. 2 crores at the time of filing charge sheet in the case, and in lieu of this money, the said CBI officer would manage clean chit to me

*...
The said picture was of an officer in police uniform. ShriSomesh Prasad disclosed the identity of the CBI officer to whom he talked in my presence and whose photo was available in the DP as shriRakeshAsthana, Special Director in CBI."*

A copy of the FIR lodged by the CBI against Respondent No.4 dated 15.10.2018 is marked and annexed herewith as **Annexure P-22(Pg 150-160)**.

(XIII) That the CBI issued a press release dated 22.10.2018 vide which they clarified that the allegations are made out against the public servants of the CBI, namely Respondent No.4ShriRakeshAsthana, Special Director and others. A copy of the press release issued by CBI dated 22.10.2018 is marked and annexed herewith as **Annexure P-23(Pg 161-162)**. A copy of the new report published in Times of India dated 22.10.2018 is marked and annexed herewith as **Annexure P-24(Pg 163-164)**.

(XIV) That the CBI arrested its Deputy Superintendent of Police Devender Kumar in connection with bribery allegations involving Rakesh Asthana herein Respondent No.4. DSP Devender Kumar who was earlier the investigation officer in a case involving meat exporter Moin Qureshi, has been arrested

on the allegations of forgery in recording the statement of Sathish Sana, who had allegedly paid bribes to get relief in that case to Respondent No.4. Mr. Kumar had allegedly fabricated this statement as an afterthought to corroborate the allegations made by Asthana against the CBI Director Alok Verma to the Central Vigilance Commissioner. A copy of the new report published in Mid Day dated 22.10.2018 is marked and annexed herewith as **Annexure P-25** (Pg 165).

(XV) That on 24.10.2018 officer, who was investigating the case against Respondent No.4 has been transferred to Port Blair with immediate effect in a completely mala fide manner. A copy of the order dated 24.10.2018 is marked and annexed herewith as **Annexure P-26** (Pg 166). Also, the whole team working under the CBI Director has been transferred out of Delhi with immediate effect. A copy of the order dated 24.10.2018 is marked and annexed herewith as **Annexure P-27** (Pg 167).

(XVI) In light of the above, the petitioner submits that the continuations of Respondent No. 4 to the post of Special Director, CBI is illegal, *mala fide* and is in violation of statutory provisions and subversive of the rule of law. Moreover, since the role of Respondent No. 4 is being investigated by the CBI and his name figures in a diary of alleged payments, his continuation in the CBI itself is untenable and therefore he ought to be transferred out of the CBI. The respondents should be directed to transfer Respondent No. 4 out of the CBI during

the pendency of the CBI investigation into his alleged involvement in the aforesaid corruption case.

(XVII) The petitioner has not filed any other petition, suit or application in any manner regarding the matter of dispute in this Hon'ble Court, or any High Court or any other Court throughout the territory of India. The petitioner has no other better remedy available.

GROUND:

- A. BECAUSE the action of the Respondents destroys the independence of the premier investigating institution of this country. Both the aforementioned impugned orders dated 23.10.2018, which in effect transfers/removes the Director CBI much before the completion of his two year fixed tenure, and appoints an interim Director CBI, are in complete violation of the aforementioned legal framework for the appointment and well as transfer/removal of the Director CBI and hence, arbitrary and against Rule of Law and thereby, violate Article 14 of the Constitution.
- B. BECAUSE the action of the Respondents in withdrawing the work of Director, CBI from Mr. Alok Verma is in total violation of the law. As per Section 4(B) of the DSPE Act, the Director, CBI cannot be transferred, before his two year term expires, without the consent of the committee referred to Section 4 A(1) of the DSPE Act. As per Section 4 A (1), as amended under the Lokpal Act the Committee consists of

- Prime Minister as chairperson
- Leader of opposition in the House of People
- Chief Justice of India or judge of the Supreme Court nominated by him

Therefore, Section 4 B (2), when it states that CBI Director can be transferred with consent of the committee referred to in Section 4 A (1) only, mandates that no CBI Director can be transferred, before his two year term expires, without the consent of the committee as amended under the Lokpal Act. Even the withdrawal of the work from the Director CBI, which in effect would amount to transfer only, could not have been done without taking consent of the Committee as provided in Section 4 A.

C. BECAUSE the reliance on Sections 8(1)(a) and 8(1)(b) of the CVC Act and Sections 4(1) & (2) of the DSPE Act for passing the aforesaid orders is totally misplaced. The power of superintendence in the matter of investigation under Section 8 of the CVC Act or Section 4(1) of the DSPE Act does not empower the CVC to withdraw work from the CBI, Director on their own, even if some complaint of corruption has been made against him, and frustrate the mandate of Section 4A(1) & 4B of the DSPE Act. Similarly, power of superintendence under Section 4(2) of the Central Government does not allow them to bypass the mandatory provisions of Section 4A(1) & 4B of the DSPE Act.

D. BECAUSE even if there is allegation of corruption against Mr. Alok Verma, as stated in the removal order, the CVC, in the guise of

power of superintendence, could not have withdrawn the work from the Director CBI and handed over to a new officer without the consent of the committee referred to in amended Section 4A (1) of the DSPE Act. At the most, the complaint should have been referred to the committee referred to in amended Section 4A (1) of the DSPE Act for the appropriate action.

- E. BECAUSE the order withdrawing the work has been passed to frustrate the mandate of the Act since Mr. Verma could not have been removed before his fixed tenure without consulting the selection committee under Section 4 A (1) of the amended DSPE Act. The impugned orders make it apparent that the aforesaid decisions have been taken without consultation with the aforementioned selection committee as is mandated by the law. Neither Mr. Alok Verma could have been divested with the work nor could Mr. Nageshwar Rao have been asked to take over the charge of the Director CBI and function as interim Director without consulting the Selection Committee mentioned in amended Section 4 A of the DSPE Act.
- F. BECAUSE the impugned orders are bad and liable to be quashed as they are actuated for mala fide reasons. It appears that Mr. Alok Verma is being victimised for taking action against Mr. Rakesh Asthana, a Gujarat cadre officer. Mr. Verma had raised objection, at the time of appointment of Mr. Rakesh Asthana as Special Director CBI, when he was consulted by the Appointment Committee of the Cabinet in October 2017. It appears Mr. Alok

Verma, in his written objection vide letter dated 21.10.2017, had objected to the appointment of Mr. Asthana as Special Director, on the ground that Mr. Asthana appeared to have been involved in corruption cases which were being investigated by the CBI itself. Besides, the CBI's Delhi Unit had registered an FIR against three senior income tax officials for allegedly accepting bribes from the Gujarat based Sterling Biotech and Sandesara Group of Companies and even Mr. Asthana's role in the said case was also under investigation.

- G.** BECAUSE an FIR under S. 7 and S. 13 (1) (d) and section 7A of the Prevention of Corruption Act was lodged on the basis of a complaint from Shri. Sathish Babu Sana, alleging payments of bribes to Mr. Asthana and other named officials. Mr. Asthana has been named as the main accused in the said FIR. Immediately after the registration of the said FIR and arrest of an officer from the CBI in the said FIR, Mr. Asthana approached the High Court of Delhi for its quashing, however, the Hon'ble High Court vide order dated 23.10.2018 allowed the investigation to go on. On that very night, in the late hours, the impugned orders are passed and works are withdrawn from Mr. Alok Verma and handed over to Mr. Nageshwar Rao.
- H.** BECAUSE the alacrity with which the government had acted in passing the impugned orders in the late hours, without there being any justifiable reason, itself shows that the same have been passed for malafide reasons.

- I. BECAUSE on 5.10.2018, Mr. Alok Verma had met the complainants who submitted a detailed 132 page complaint relating to purchase of Rafale aircrafts. The complaint sought the registration of FIR and investigation into the said deal. The said complaint made the specific charge against the top political leaders in the present government, under the Prevention of Corruption Act. Media reports suggest that the fact that the CBI, Director met the said complainants had not gone well with the government.
- J. BECAUSE, apart from the fact that Mr. Nageswar Rao's appointment as acting director is bad in law, there is an online investigation report published on www.savukkyonline.com, which enumerates various lapses and instances of unprofessional conduct on the part of Mr. Nageswar Rao which merits further investigation. As per the report, Mr. Alok Verma had apparently ordered a discreet enquiry against Mr. Rao, when he was posted as Joint Director, Chennai Zone, CBI and had ordered transfer of the investigation of important cases from Chennai Zone of CBI to Banking and Securities Fraud Cell of Bengaluru.
- K. BECAUSE CBI is investigating the role of Respondent No.4 in the said "Diary 2011", his continuation to such a high post as the Special Director of CBI itself is bound to create situations where officers junior to Respondent No. 4 would not be able to conduct a free, fair and fearless probe into his role. Thus, his continuation in the CBI would violate the principle of institutional integrity.

- L. BECAUSE Respondent No. 4 is being investigated by the CBI in several ongoing cases and as such, the continuation of the Respondent No 4 as the special director has the effect of compromising the independence of the said investigations. It is submitted that the fact that a person being investigated by the CBI is continuing in the CBI offends the concept of public accountability and the faith of the public in the independence of the CBI.
- M. BECAUSE there have been serious and grave allegations that the Respondent No 4 has close ties to the Sterling/Sandesara group, which is being investigated by the CBI and furthermore, continues to retain close relation with the said group.
- N. BECAUSE CBI has registered an FIR against Respondent No.4 u/s 7 and 13(1)(d) and section 7A of Prevention of Corruption Act dated 15.10.2018 for taking bribe for giving a clean cheat to an accused being investigated by the CBI. Further, CBI has also issued a press release dated 22.10.2018 vide which they have clarified that the allegations are made out against the public servants of the CBI, namely Respondent No.4 Shri Rakesh Asthana, Special Director and others.
- O. Because the CBI arrested its Deputy Superintendent of Police Devender Kumar in connection with bribery allegations involving Rakesh Asthana herein Respondent No.4. DSP Devender Kumar who was earlier the investigation officer in a case involving meat

exporter Moin Qureshi, has been arrested on the allegations of forgery in recording the statement of Sathish Sana, who had allegedly paid bribes to get relief in that case to Respondent No.4. Mr. Kumar had allegedly fabricated this statement as an afterthought to corroborate the allegations made by Asthana against the CBI Director Alok Verma to the Central Vigilance Commissioner

- P. Because the position of Special Director, CBI is an extremely important and sensitive position, and as such must be above all suspicion. The various facts which have come to light as regards the conduct of the Respondent No 4 and as set out above, clearly disclose that his continuation as Special Director, CBI is compromising the institutional and impeccable integrity of the entire organization.
- Q. Because the continuation of Respondent No. 4 to the post of Special Director, Central Bureau of Investigation (CBI) is arbitrary, *mala fide* and in violation of the principle of impeccable integrity and institutional integrity as laid down by this Hon'ble Court. The aforesaid attributes are *sine qua non* for the post of a key position in an integrity institution such as the CBI.
- R. Because officer who was investigating the case against Respondent No.4 has been transferred to Port Blair with immediate effect in a completely *mala fide* manner on 24.10.2018.

Also, the whole team working under the CBI Director has been transferred out of Delhi with immediate effect.

- S. That the Special Director of the CBI is the second highest authority in the organization after the Director. He supervises almost all the important cases being handled by the CBI and is also responsible for constitution of investigating teams for probing corruption cases. Hence, this Hon'ble Court and later on Parliament have made determined efforts to enhance the functional autonomy of such senior level officers of the CBI and to limit/eliminate the executive discretion in the matter of appointment of such key functionaries.
- T. BECAUSE the Central Bureau of Investigation (CBI) established under the Delhi Special Police Establishment Act (DSPE), 1946 is the premier investigation agency in the country. It investigates the corruption related offences connected with the Central Government, and under certain circumstances, also cases connected with State Government entities. This Hon'ble Court has on many occasions entrusted important cases of corruption and violation of human rights to the CBI for investigation. The CBI has investigated many sensitive cases involving powerful and influential individuals.
- U. BECAUSE the CBI is investigating "Diary 2011" in which the name of Respondent No. 4 appears. The CBI has registered two FIRs dated 30.08.2017 and 25.10.2017 with regard to the said Diary against Income Tax Officers as well as other public servants who

appear to have been paid huge sums of money by the Sandesara and Sterling Groups of Companies. The continuation of Respondent No.4 to a high post such as that of the Special Director of CBI itself is bound to create situations where officers junior to Respondent No. 4 would not be able to conduct a free, fair and fearless probe into his role. Thus his continuation as Special Director, CBI would violate the principle of institutional integrity.

- V. BECAUSE an independent investigation into the aforementioned allegations of corruption against the CBI officials and other related issues, which have unfolded in the last few days, cannot be left to the officer who has been handed over the charge of Director, CBI as he himself has been facing corruption charges and Mr. Verma had apparently ordered a discreet enquiry against him neither the CVC can be trusted for the said responsibility as his conduct has been clearly partisan in the present case. Therefore, a SIT should be constituted to look into the recent unprecedented events which have unfolded in past few days and also to investigate the allegations of corruption against the senior officials of the CBI and submit the report before this Hon'ble Court for the consequent action thereupon.

PRAYERS

In view of the facts & circumstances stated above, it is most respectfully prayed that this Hon'ble Court may in public interest be pleased to: -

- a. Issue an appropriate writ or direction for quashing of the order dated 23.10.2018, issued by the Central Vigilance Commission (Respondent No. 4), vide which the incumbent Director of Central Bureau of Investigation, Mr. Alok Verma (Respondent No. 5) has been illegally divested of all the work related to the Director, CBI;
- b. Issue an appropriate writ or direction for quashing of the order dated 23.10.2018, issued by Respondent no. 1, vide which Mr. Nageshwar Rao, Joint Director CBI (Respondent No. 6) has been handed over the charge of the Director CBI;
- c. Issue an appropriate writ or order for the removal of Mr. Rakesh Asthana (Respondent No. 4) from the CBI;
- d. Issue an appropriate writ or order for constituting Special Investigating Team into the charges of corruption against the officials of the CBI and also FIR lodged against Mr. Rakesh Asthana (Respondent No. 4).
- e. Issue or pass any writ, direction or order, which this Hon'ble court may deem fit and proper under the facts and circumstances of the case.

PETITIONER THROUGH:

(PRASHANT BHUSHAN)
COUNSEL FOR THE PETITIONER

DRAWN & FILED ON: 25.10.2018
NEW DELHI

35

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. OF 2018

(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

COMMON CAUSE

PETITIONER

VERSUS

UNION OF INDIA & ANR

RESPONDENTS

AFFIDAVIT

I, Vipul Mudgal, S/o Shri Jai Kumar Mudgal, the Director of the Petitioner Society, having its office at 5, Institutional Area, Nelson Mandela Road, Vasant Kunj, New Delhi-110070, do hereby solemnly affirm and state on oath as under:

1. That I am the Director of the Petitioner Society in the aforementioned writ petition and being familiar with the facts and circumstances of the case, I am competent and authorized to swear this Affidavit.
2. That I have read and understood the contents of the Synopsis and List of Dates (Page B to H), Writ Petition (Page 1 to 34), Application for Interim Directions (Page 168 to 169). I state that the facts therein are true to the best of my knowledge, based on documentary evidence, and nothing material has been concealed therefrom. The annexures of the writ petition are true copies of their respective originals.

3. The source of the information is official documents, court records and information available in the public domain, and information received from reliable sources.
4. That this petition is only motivated by public interest. I affirm that I have no personal interest in this matter.
5. That I have done whatsoever enquiry that was possible and I state that no relevant facts in my knowledge have been withheld.

DEPONENT

VERIFICATION:

I, the above named Deponent, do hereby verify that the contents of the above Affidavit are true and correct to my knowledge; that no part of it is false and that nothing material has been concealed therefrom.

Verified at New Delhi on this 25th day of October 2018.

DEPONENT