

**IN THE SUPREME COURT OF INDIA
CIVIL EXTRAORDINARY JURISDICTION**

IA. NO. ____ OF 2018 IN

WRIT PETITION (CIVIL) NO. 1309 OF 2018

IN THE MATTER OF:

ALOK KUMAR VERMA

...PETITIONER

Versus

UNION OF INDIA
TH. ITS SECRETARY

... RESPONDENTS

AND IN THE MATTER OF:

SHRI. MALLIKARJUN KHARGE
MALLIKARJUN KHARGE
9, SAFDARJUNG ROAD,
NEW DELHI- 110 011

...APPLICANT/INTERVENOR

APPLICATION FOR DIRECTIONS

TO

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

THE HUMBLE APPLICATION OF
THE APPLICANTS ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The Applicant is the Leader of the single largest opposition party [INC] in the Lok Sabha and is also a member of the three-member Committee ("**Statutory Committee**") under Section 4A of the Delhi Special Police Establishment Act, 1946 ("**DSPE Act**"). The Applicant is constrained to move the instant Application in overwhelming national and public interest to protect and maintain the institutional sanctity and integrity of India's premier investigating agency i.e. the CBI.

2. The Applicant as a concerned stakeholder wishes to bring to the kind attention of this Hon'ble Court the brazen and illegal actions of the political executive in interfering with the independent functioning of the Director, CBI. It is respectfully submitted that the entire action of the Central Vigilance Commission ("**CVC**") *vide* its order 23.10.2018 and the Department of Personnel and Training ("**DoPT**") *vide* order dated 23.10.2018 seeking to divest Director, CBI, Shri Alok Kumar Verma, IPS of his statutory powers and functions is completely illegal, arbitrary, punitive, without jurisdiction and in the teeth of the judgment of this Hon'ble Court in **Vineet Narain v. Union of India, (1998) 1 SCC 226**. The said orders also seek to completely bypass the functioning of the Statutory Committee. This Hon'ble Court in Writ Petition (C) No. 1309 of 2018 is already considering the validity and propriety of the orders dated 23.10.2018 passed by the CVC and DoPT.
3. This Hon'ble Court in *Vineet Narain's* case unequivocally observed that holders of public office are entrusted with powers which have to be exercised in public trust. This Hon'ble Court further held that corruption in public life if permitted to continue unchecked has ultimately the deleterious effect of eroding the Indian polity. Accordingly, this Hon'ble Court was pleased to pass directions for effective functioning and

independence of the CBI and CVC. In this regard the directions 6, 7 and 8 in para 58 are relevant and are extracted hereunder:

“ ...6. Recommendations for appointment of the Director, CBI shall be made by a Committee headed by the Central Vigilance Commissioner with the Home Secretary and Secretary (Personnel) as members. The views of the incumbent Director shall be considered by the Committee for making the best choice. The Committee shall draw up a panel of IPS officers on the basis of their seniority, integrity, experience in investigation and anti-corruption work. The final selection shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee. If none among the panel is found suitable, the reasons thereof shall be recorded and the Committee asked to draw up a fresh panel.

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

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

4. The DSPE Act, in Section 4A, encapsulates the procedure for appointment of the Director which reads as follows:

“**4A.** Committee for Appointment of Director: (1) The Central Government shall appoint the Director on the recommendations of the Committee consisting of:”

- | | |
|--|-------------|
| (a) The Prime Minister | Chairperson |
| (b) The Leader of Opposition
recognized as such in the House
of People or where there is no
such Leader of Opposition, then
the Leader of the single largest | Member; |

Opposition Party in that House
(c) The Chief Justice of India or Member.
Judge of the Supreme Court
nominated by him

(2). No appointment of a Director shall be invalid merely by reason of any vacancy or absence of a Member in the Committee.

(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 (61 of 1951), for being considered for appointment as the Director.

5. The terms and conditions of the service of the Director, CBI are also statutorily protected under Section 4B

4B. Terms and conditions of service of Director. —(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. On a conjoint reading of Section 4A, Section 4B of the DSPE Act and the directions of this Hon'ble Court in *Vineet Narain's* case, it is clear that the tenure and term of the Director, CBI is protected and even the process of transfer cannot be effected without the previous consent of the Committee.

7. In this background, the orders dated 23.10.2018 passed by the CVC and the DoPT divesting Shri. Alok Kumar Verma of his powers, functions, and duties is a direct and concerted attempt to impede the independent functioning of the Director, CBI.
8. The Applicant had also written a letter dated 25.10.2018 in this regard placing on record the fact that no meeting of the Selection Committee was convened to deliberate on this issue as prescribed under law. It was also pointed out that *de-facto* transfer/ divesting of the authority of the Director, CBI is illegal and malafide.
9. It is submitted that the order dated 23.10.2018 passed by the CVC is completely without jurisdiction. Section 4 (1) of the DSPE Act relates only to the investigation of offences and cannot in any manner vest CVC with the power to divest the Director, CBI of his powers and functions. Further, there is no power conferred upon the CVC under Section 8 (1) (a) or 8 (1) (b) of the Central Vigilance Commission Act, 2003 ("**CVC Act**") to pass any order of the kind issued on 23.10.2018.
10. It is further submitted that the Central Government also cannot exercise any power under Section 4 (2) of the DSPE Act which is in derogation of the powers of the Statutory Committee. The order dated 23.10.2018 passed by the DoPT directing that "Shri Alok Kumar Verma, IPS, Director, CBI be divested of and shall

not exercise any of his functions, powers, duties and supervisory role in any manner as the Director, CBI, with immediate effect and until further orders” is completely without jurisdiction. It is submitted that the political executive *vide* the order dated 23.10.2018 has completely negated the role of the Statutory Committee constituted under section 4A of the DSPE Act which is entrusted with protecting the integrity of term and tenure of the Director, CBI. The Applicant being a member of the Statutory Committee was not consulted nor was he a part of any meeting or privy to any decision to divest Shri. Alok Kumar Verma of his powers as Director, CBI. It is also not in public domain that any such meeting of the Statutory Committee was convened. It is therefore clear that the decision to divest Shri. Alok Kumar Verma, IPS of his powers as Director, CBI was taken by the political executive in complete contravention of the provisions of the DSPE Act, CVC Act and the directions of this Hon’ble Court in *Vineet Narain’s case* and as such ought to be set aside to maintain the institutional sanctity and integrity of the CBI.

11. This Application is made *bonafide* and in the interest of justice.

PRAYER

In view of the above, it is respectfully prayed that this Hon’ble Court may be pleased to:

- a) Allow the present Application and pass appropriate order quashing/setting aside the order dated 23.10.2018 passed by Central Vigilance Commission bearing no. F.No. 018/DPT/013-Vig.IX and the order dated 23.10.2018 passed by the Department of Personal Training bearing reference no. 202/22/2018-A-AVD-II as being arbitrary, illegal, without jurisdiction and in derogation of powers conferred upon the Statutory Committee under Section 4A of the DSPE Act.
- b) Any other order in the interest of justice and equity;

AND FOR THIS ACT OF KINDNESS, THE APPLICANT AS IN DUTY BOUND SHALL EVERY PRAY

DRAWN BY:

FILED BY

MR. DEVADATT KAMAT
MR. RAJESH INAMDAR
MR. NIZAM PASHA
ADVOCATES

GAUTAM TALUKDAR
ADVOCATE ON RECORD FOR THE
APPLICANT/INTERVENOR

SETTLED BY

MR. KAPIL SIBAL
SR. ADVOCATES

PLACE: NEW DELHI
FILED ON: 03.11.2018