2023 STPL(WEB) 60 SC
SUPREME COURT OF INDIA

(B.R. GAVAI ; VIKRAM NATH AND SANJAY KAROL JJ.)

DR. JAYA THAKUR

Petitioners

VERSUS

UNION OF INDIA & ORS.

Respondents

Writ Petition (Civil) No. 456 of 2022 With Writ Petition (Civil) No. 1271 of 2021 Writ Petition (Civil) No.1274 of 2021 Writ Petition (Civil) No.1272 Of 2021 Writ Petition (Civil) No.1307 Of 2021 Writ Petition (Civil) No.1330 Of 2021 Writ Petition (Civil) No.14 Of 2022 Writ Petition (Civil) No.274 Of 2022 Writ Petition (Civil) No.786 Of 2022 M.A. No. 1756 Of 2022 In Writ Petition (Civil) No.1374 Of 2020 Writ Petition (Civil) No.1106 Of 2022-Decided on 11-7-2023

Service Law
Service Law – Extension to Director of Enforcement - Set aside

Validity of Amendment – Amendments valid – Legislature Competent – Not violate Fundamental Rights

JUDGMENT

B.R. Gavai, J.-This batch of writ petitions seeks a writ, order or directions in the nature of certiorari for quashing of order dated 17th November 2021 passed by the respondent No.1 for further extension of tenure of the respondent No.2. In Writ Petition (Civil) No.1106 of 2022, a further extension granted to respondent No.2 vide order dated 17th November 2022 has also been challenged. All these petitions also challenge the validity of Central Vigilance Commission (Amendment) Act, 2021, the Delhi Special Police Establishment (Amendment) Act, 2021 and the Fundamental (Amendment) Rules, 2021.

2. The facts, in brief, giving rise to the present writ petitions are as under. The reference hereinafter to the parties would be made as found in the cause-title of Writ Petition (Civil) No.456 of 2022.

3. The respondent No.2-Sanjay Kumar Mishra in Writ Petition (Civil) No. 456 of 2022, who was working as Principal Special Director in the Directorate of Enforcement ("ED" for short) was appointed as Director of Enforcement for a period of two years from the date of his assumption of charge of the post or until further orders, whichever was earlier, vide order dated 19th November 2018.

4. Vide order dated 13th November 2020, the President of India approved the modification of the order dated 19th November 2018 by amending the period of appointment from two years to three years.

5. Writ Petition (Civil) No. 1374 of 2020 [Common Cause (A Registered Society) v. Union of India & Ors.*[2021 SCC OnLine SC 687]*] was filed on 27th November 2020 by Common Cause (a registered society) before this Court in public interest under Article 32 of the Constitution of India praying for quashing of the order dated 13th November 2020 and for a consequential direction to the respondent No.1 to appoint the Director of Enforcement in accordance with the procedure prescribed under Section 25 of the Central Vigilance Commission Act, 2003 (hereinafter referred to as "the CVC Act").

6. This Court though dismissed the said Writ Petition (Civil) No. 1374 of 2020 [Common Cause (A Registered Society) v. Union of India & Ors.] vide judgment and order dated 8th September 2021 [hereinafter referred to as "Common Cause (2021)"], yet directed that no further extension shall be granted to the respondent No.2.

7. On 14th November 2021, since Parliament was not in session, the President of India promulgated the Central Vigilance Commission (Amendment) Ordinance, 2021, thereby inserting two new provisos to Section 25(d) of the CVC Act. Simultaneously, the President of India also promulgated the Delhi Special Police Establishment (Amendment) Ordinance 2021, thereby inserting two new provisos to Section 4B(1) of the Delhi Special Police Establishment Act, 1946 (hereinafter referred to as "the DSPE Act").

8. On 15th November 2021, the Fundamental Rules, 1922 was amended by the Fundamental (Amendment) Rules, 2021, whereby the fifth proviso to F.R. 56(d) was substituted by a new proviso.

9. On 15th November 2021 itself, a meeting of the Committee headed by the Central Vigilance Commissioner was held to consider the proposal for extension of the tenure of the respondent No.2. The Committee decided to extend the tenure of the respondent No.2 as Director of Enforcement for a period of one year i.e. upto 18th November 2022 in public interest.

10. Vide Office Order No.238 of 2021 dated 17th November 2021, the tenure of the respondent No.2 was extended for a period of one year beyond 18th November 2021 i.e. upto 18th November 2022 or until further orders, whichever was earlier.

11. Challenging the vires of the Amendment Ordinances and/or the Fundamental (Amendment) Rules, 2021 and/or the said Office Order dated 17th November 2021, Writ Petition (Civil) Nos. 1307 of 2021, 1272 of 2021, 1274 of 2021, 1330 of 2021 and 1271 of 2021 came to be filed before this Court.

12. On 18th December 2021, Parliament enacted the Central Vigilance Commission (Amendment) Act, 2021 and the Delhi Special Police Establishment (Amendment) Act, 2021.

13. Challenging the vires of the Amendment Acts and/or the Office Order dated 17th November 2021, Writ Petition (Civil) Nos. 14 of 2022, 274 of 2022 and 456 of 2022 came to be filed before this Court. In some of the petitions, a challenge has also been made to the amendment to the DSPE Act insofar it provides for extension of the tenure of the Director of Central Bureau of Investigation ("CBI" for short).

14. That during the pendency of the said writ petitions, vide order dated 17th November 2022, passed by the respondent No.1, the term of the respondent No.2 was further extended for a period of one year i.e. from 18th November 2022 to 18th November 2023. Being aggrieved thereby, Writ Petition (Civil) No. 1106 of 2022 has been filed before this Court.

15. We have heard Mr. K.V. Viswanathan, learned Amicus Curiae. We have also heard Mr. Anoop G. Choudhary, Mr. Gopal Sankarnarayanan, Dr. Abhishek Manu Singhvi, learned Senior Counsel, Mr. Prashant Bhushan, Mr. J.S. Sinha, and Mr. Sharangowda, learned counsel appearing on behalf of the petitioners and Mr. Tushar Mehta, learned Solicitor General and Mr. S.V. Raju, learned Additional Solicitor General, appearing on behalf of the respondent-Union of India, and Ms. Vanshaja Shukla, learned counsel appearing on behalf of the respondent No.3 in M.A. No.1756 of 2022.

16. Mr. Anoop G. Choudhary, learned Senior Counsel appearing on behalf of the petitioner in Writ Petition (Civil) No. 456 of 2022 and Writ Petition (Civil) No.1106 of 2022 submits that any action which nullifies the effect of the order of this Court dated 8th September 2021 is not permissible in law.

17. Mr. Choudhary further submits that the respondent No.2 was also a party to the judgment of this Court in the case of Common Cause (2021). He submits that, as such, the direction of this Court that no further extension should be granted to the respondent No.2 is binding on him as well as the Union of India. Learned counsel submits that the stand taken by the respondent No.1 that the basis on which the direction was issued by this Court was that the officer concerned had attained the age of superannuation and on account of amendment to the Fundamental Rules (hereinafter referred to as "FR"), the extension to the term of the Director of Enforcement is permissible and as such, the basis of the judgment of this Court in the case of Common Cause (2021) is taken away by amending the FR, is wholly without substance.

18. Mr. Gopal Sankarnarayanan submits that this Court in paragraph 23 of the judgment in the case of Common Cause (2021), though has upheld the power of the Union of India to extend the tenure of Director of Enforcement beyond the period of two years, it has made it clear that extension of tenure granted to officers who have attained the age of superannuation should be done only in rare and exceptional cases. He submits that this Court has specifically stated that any extension of tenure granted to persons holding the post of Director of Enforcement after attaining the age of superannuation should be for a short period. It is submitted that all these directions issued by this Court have been annulled by the respondent No.1-Union of India. He submits that though the respondent No.2 was initially appointed for a period of 2 years, by virtue of extensions granted, he will continue for a period of 5 years.

19. Mr. Sankarnarayanan further submits that the words that have been used by this Court are, "to facilitate the completion of on-going investigations" and "in rare and exceptional cases". However, ignoring those words, extension is being given to the respondent No.2 on the ground of a vague concept of "public interest".

20. Mr. Sankarnarayanan further submits that in view of the judgment of this Court in the case of Madras Bar Association v. Union of India and another*[2021 SCC OnLine SC 463= (2022) 12 SCC 455]*, the effect of the judgments of the Court can be nullified by a legislative act of removing the basis of the judgment. Such law can be retrospective. However, retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. He further submits that nullification of mandamus by an enactment is also an impermissible legislative exercise. Since there is a specific mandamus that the respondent No.2 should not be granted further extension, nullification of such a mandamus cannot be permitted.

21. Mr. Sankarnayaranan submits that this Court in the cases of Vineet Narain and others v. Union of India and another*[(1998) 1 SCC 226]*, Prakash Singh and others v. Union of India and others (Prakash Singh-1) *[(2006) 8 SCC 1 (Prakash Singh-1)]*, Prakash Singh and others v. Union of India(Prakash Singh-2) *[(2019) 4 SCC 14 (Prakash Singh-2)]* and Prakash Singh and others v. Union of India and others(Prakash Singh-3) *[(2019) 4 SCC 1 [Prakash Singh-3)]* has consistently held that the tenure of the high-ranking officials like the Director of Enforcement, the Director of CBI and the Director General of Police should be for a fixed period of two years in order to insulate such an officer from extraneous pressures and enable him to work independently and freely. It is submitted that the very provision which permits the authority to grant extension is contradictory to the requirement of insulation. An incumbent if he performs as per the wishes of the authority, he would get an extension. Per contra, if the incumbent in the office does not perform as per the wishes of the authority, he would be denied an extension. It is submitted that as such, the very independence of such an officer would be taken away. It is, therefore, submitted that the insulation provided to the said offices from extraneous pressures is taken away. The learned counsel, therefore, submits that both the Amendments need to be quashed and set aside. So also, the extension granted to the respondent No.2 needs to be set aside.

22. Mr. Sharangowda, learned counsel appearing on behalf of the petitioner in Writ Petition (Civil) no. 274 of 2022 submits that the vigilance clearance is also required at the stage of extension. He submits that in the present case no such vigilance clearance has been done and as such, the extension granted is not permissible in law.

23. Learned counsel appearing on behalf of the original petitioner in Writ Petition (Civil) No.1374 of 2020 submits that M.A. No.1756 of 2022 filed by the Union of India for modification of the judgment and order passed by this Court dated 8th September 2021 is not permissible in law. He submits that by way of present M.A. for modification, the applicants are, in effect, seeking review of the judgment of this court.

24. Relying on the judgment of the Constitution Bench of this Court in the case of Beghar Foundation through its Secretary and another v. Justice K.S. Puttaswamy (Retired) and others*[(2021) 3 SCC 1]*, he submits that the Change in Law cannot be a ground for review.

25. Mr. K.V. Viswanathan, learned Amicus, submitted that this Court in the case of Vineet Narain (supra) has approved the recommendations of the Independent Review Committee. He submits that the said Independent Review Committee was tasked, inter alia, to examine the structure and working of the CBI and the ED and suggest the changes needed to ensure against extraneous pressures, arbitrary withdrawals or transfers of personnel etc. He submits that insofar as the ED is concerned, the Director of Enforcement was to be selected from a panel of persons who were having a minimum tenure of 2 years.

26. The learned Amicus submits that the amendment to the CVC Act, the DSPE Act, and the FR are totally contrary to the spirit of the long line of judgments delivered by this Court. It is submitted that this Court has held that the tenure of the Director of CBI as well as the Director of Enforcement should be a fixed one so that the person holding such an office can act independently, impartially and without any extraneous pressures. He submits that the impugned Amendments now permit for three extensions of one year at a time. It is, therefore, submitted that the Government can use the 'carrot and stick' policy so as to ensure that the said Directors work according to the wishes of the Government. He submits that a Director would always succumb to the pressure of the Government so as to ensure that he gets further extension as provided for in the statute by amendment. Learned Amicus, therefore, submits that these provisions being inconsistent with the spirit of the earlier judgments of this Court that the post of the Director of Enforcement as well as the Director of CBI should be kept insulated stand defeated. Learned Amicus, therefore, submits that such a provision which permits piecemeal extension of tenure of one year each subject to a maximum cumulative tenure of five years undermines the independence and integrity of the office. Learned Amicus submits that the impugned Amendments would also result in stagnation and inefficiency of service/administration and cause frustration amongst other eligible officers in the cadre.

27. Learned Amicus, relying on the judgment of this Court in the case of Madras Bar Association v. Union of India and another*[(2014) 10 SCC 1]* submits that this Court has struck down the provision for re-appointment of the Chairperson/Members for another term of 5 years by holding that such a provision itself has the effect of undermining the independence of the Chairperson/Members of National Tax Tribunal (NTT). He submits that this Court has held that every Chairperson/Member appointed to NTT would be constrained to decide matters in a manner that would ensure his reappointment in terms of Section 8 of the National Tax Tribunals Act, 2005. His decisions may or may not be based on his independent understanding.

28. Learned Amicus further relying on the judgment of this Court in the case of Rojer Mathew v. South Indian Bank Limited represented by its Chief Manager and others*[(2020) 6 SCC 1]* submits that when the above provision was sought to be introduced by way of Rules, the same was struck down by this Court as being in disregard of the binding principles enunciated by this Court and being destructive of judicial independence.

29. Learned Amicus, relying on the judgment of the Madras High Court in the case of V. Sasitharan & Ors. v. The Government of Tamil Nadu & Ors. *[1995 SCC OnLine Mad 592]*, submits that the extensions granted to the officers beyond the date of retirement generate disgruntlement and dis-appointment amongst the other officers, lower down in the ladder whose only aspiration in their official career would be to reach to the top most post in the administrative set up. Learned Amicus submits that the Madras High Court has held that if such extensions are granted as a matter of bounty, then there is every possibility of the officer in service playing to the tunes of those in power totally acting against public interest.

30. Learned Amicus relying on a series of judgments of this Court including the ones in the case of Shri Prithvi Cotton Mills Ltd. and another v. Broach Borough Municipality and others*[(1969) 2 SCC 283]*, Bhaktawar Trust and others v. M.D. Narayan and others*[(2003) 5 SCC 298]*, Cauvery Water Disputes Tribunal, Re*[1993 Supp (1) SCC 96]* and Madras Bar Association v. Union of India and another*[2021 SCC OnLine SC 463]*, submits that though it is permissible for the Legislature to change the basis on which a decision is given by the Court and, thus, change the law in general, which will affect a class of persons and events at large, it is not permissible to set aside an individual decision inter partes and affect their rights and liabilities. It is submitted that insofar as the respondent No.2 is concerned, there is a specific mandamus issued by this Court that he shall not be granted further extension. Learned Amicus submits that the impugned Amendments do not change the basis on which a decision was given by the Court, but, in effect, nullify the mandamus and, as such, would not be sustainable.

31. Learned Amicus submits that he is not concerned with what an individual case is. He submits that he is concerned with the misuse of powers by any political party, which may be in power. It is submitted that the impugned Amendments, if permitted to remain, would lead to a tendency wherein incumbents/officers would succumb to the pressure of the Government in power and act as per their desire so that they get further extensions. Learned Amicus, therefore, submits that the impugned Amendments are liable to be quashed and set aside. It is submitted that, in any case, the amended provisions are manifestly arbitrary.

32. Learned Amicus submits that the argument that the present incumbent needs to be continued on account of an ongoing mutual evaluation of India by the Financial Action Task Force (FATF) is also self-contradictory. It is submitted that even after the Amendment, the respondent No.2 can continue only upto November 2023, whereas the possible plenary discussions are likely to be held in the month of June 2024. It is, therefore, submitted that the contention that the continuation of the present incumbent is necessary so that India represents its case effectively in FATF review, is also without substance.

33. Shri Tushar Mehta, learned Solicitor General ("SG" for short), raised a preliminary objection to the maintainability of the present writ petitions at the behest of the present petitioners. He submits that most of the writ petitioners are members of political parties. He submits that various members of these political parties are under investigation by the ED. It is, therefore, submitted that the present writ petitions are not bona fide public interest litigations, but are filed with an oblique motive.

34. The learned SG submits that the appointment of the Director of Enforcement in the ED is required to be made by the Central Government on the recommendation of the Committee consisting of:

(i) The Central Vigilance Commissioner - Chairperson

(ii) Vigilance Commissioners - Members

(iii) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government - Member

(iv) Secretary to the Government of India in-charge of the Ministry of Personnel in the Central Government- Member

(v) Secretary to the Government of Indiain- charge of the Department of Revenue, Ministry of Finance in the Central Government - Member

35. Learned SG further submits that the Central Vigilance Commissioner and the Vigilance Commissioners, prior to being appointed by the President are required to undergo the process of recommendation by a High-Level Committee consisting of:

(a) the Prime Minister - Chairperson

(b) the Minister of Home Affairs – Member

(c) the Leader of the Opposition in the House of the People - Member

36. Learned SG further submits that the provision for removal of Central Vigilance Commissioner and Vigilance Commissioners are very stringent. It is submitted that they can be removed from the office only by an order of the President on the ground of proved misbehaviour or incapacity or after this Court, on a reference made to it by the President, has, on inquiry, reported that the Central Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought to be removed on such ground. It is, therefore, submitted that the Central Vigilance Commissioner and the Vigilance Commissioners constitute a body which is totally independent, impartial, impeccable and isolated.

37. Learned SG submits that, equally, the Director of CBI, prior to appointment, has to undergo the process of recommendation by the Committee consisting of:

(a) the Prime Minister - Chairperson

(b) the Leader of Opposition recognised as such in the House of the People or where there is no such Leader of Opposition, then the Leader of the single largest Opposition Party in that House. - Member

(c) the Chief Justice of India or Judge of the Supreme Court nominated by him - Member

38. Learned SG further submitted that the extension can be granted to the incumbents in both the offices only if the High- Level Committees (mentioned supra) recommend the same, and that too, in public interest and for the reasons to be recorded in writing. It is submitted that the provision of granting extension of one year at a time is made so that the incumbent functions effectively. Learned SG further submits that the argument that incremental extensions would lead to the incumbents working under the pressure of the Government is totally untenable. He submits that the extensions could be granted only in a case when the Committee, as provided in Section 25 of the CVC Act, recommends such an extension. He submits that such Committee consists of the Central Vigilance Commissioner and the Vigilance Commissioners who are totally independent, impeccable and impartial persons. Learned SG submits that if a long-fixed tenure of 5 years is granted at a time, then there is also a possibility that a person, knowing that he will continue to be in the office for a period of 5 years, may not discharge his duties effectively.

39. Learned SG submits that insofar as the Director of CBI is concerned, equally, the extension can be granted only in an event when the Committee consisting of (a) the Hon'ble Prime Minister; (b) the Leader of Opposition; and (c) the Chief Justice of India or his nominee would recommend such an extension.

40. Learned SG relying on the judgments of this Court in the cases of Indian Aluminium Co. and others v. State of Kerala and others*[(1996) 7 SCC 637]*, Goa Foundation and another v. State of Goa and another*[(2016) 6 SCC 602]* and K.S. Puttaswamy (Retired) and another (Aadhar) v. Union of India and another*[(2019) 1 SCC 1]* submits that the judgment delivered by this Court in the case of Common Cause (2021) was on the basis of the FR and the provisions in Section 25(d) of the CVC Act, as it existed then. However, now the FR as well as the CVC Act has undergone an amendment. It is, therefore, submitted that, by an amendment the very basis on which the judgment was delivered has been taken away. He, therefore, submits that the Legislature, which is undoubtedly competent to pass a legislation, has taken away the basis on which the Common Cause (2021) judgment was rendered upon.

41. The learned SG submits that, the question that will have to be considered by this Court is that, as to whether this Court would have rendered the same judgment which was delivered by it in Common Cause (2021), had it considered the law which has undergone change. Learned SG submits that when the Common Cause (2021) judgment was delivered, the FR did not include the post of Director of Enforcement. Now, the same has been included by way of an amendment and also a provision has been made that an extension could be granted upto a period as provided in the relevant Act. He submits that, since the amended Section 25 of the CVC Act now permits an extension at a time for one year could be granted with a rider that the cumulative period should not be more than 5 years, the arguments advanced by the petitioners are liable to be rejected. The learned SG further submits that the scope of interference by this Court while exercising power of judicial review of the legislative action of the State is very limited. He submits that unless the Court finds that the legislation is not within the competence of the legislature that has enacted the law or it has violated the fundamental rights or any of the provisions of the Constitution, it will not be permissible for this Court to interfere with the same. He relied on various judgments of this Court in support of this proposition.

42. Learned SG submits that the contention that by the impugned Amendment to the CVC Act and the DSPE Act, the mandamus issued by this Court has been annulled is without substance. It is submitted that the mandamus issued by this Court was contextual on the basis of the statutory provision existing then. Since the statutory provision has undergone a complete change taking away the foundation on the basis of which the mandamus is issued, the contention in that regard deserves to be rejected.

43. Learned SG further submitted that India is undergoing FATF review. FATF review plays an important role. It is submitted that the said evaluation is done by a team including members from different countries across the world. A mutual evaluation report provides an in-depth description and analysis of a country's system for preventing criminal abuse of the financial system as well as focused recommendations to the country to further strengthen its system. It is submitted that the main component of the evaluation is its effectiveness. It is submitted that the said evaluation involves various components/stages. The evaluation had to be done in the year 2019. However, it could not be done on account of the COVID- 19 pandemic. It is submitted that the evaluation has already begun and is likely to end in June 2024. It is submitted that since the present incumbent is at the helm of affairs for the last so many years, it was found necessary that for effective presentation of the efforts made by the country, he should be continued till the process of evaluation is complete. Learned SG submits that though nobody is indispensable, however, leadership makes a lot of difference. Therefore, it was found that the present assessment should be done under the leadership of the present incumbent.

44. Shri S.V. Raju, learned ASG supplemented the arguments advanced by the learned SG. He submits that in view of the judgment of this Court in the case of M/s Kishan Lal Lakhmi Chand and others v. State of Haryana and others*[1993 Supp (4) SCC 461]*, the Legislature has power even to annul the mandamus issued by the Court. Relying on the judgment of this Court in the case of Welfare Association, A.R.P., Maharashtra and another v. Ranjit P. Gohil and others*[(2003) 9 SCC 358]*, he submits that the words

"rare" and "exceptional" as found in the case of Common cause (2021) have now been taken away by an Amendment and, as such, no interference would be warranted either with the Amendments to the enactments or to the extensions so granted.

45. Mr. Gopal Sankarnarayanan, in rejoinder, submits that insofar as the Director of Enforcement is concerned, he is under the direct control of the Ministry of Finance and the incremental extension would lead to a situation where the incumbent would act as per the desires of the Government. The learned Senior Counsel also relying on the recent judgment of the Constitution Bench of this Court in the case of Anoop Baranwal v. Union of India*[2023 SCC OnLine SC 216]* submits that the institutions like the ED and the CBI need to be kept insulated to protect the democracy. He, therefore, reiterates that the impugned Amendments so also the extensions granted to the respondent No.2 be set aside.

46. After hearing the learned counsel for the parties, we find that, following two questions arise for consideration: (i) As to whether the amendment to Section 25 of the CVC Act by the Central Vigilance Commission (Amendment) Act, 2021 and to sub-section (1) of Section 4B of the DSPE Act by the Delhi Special Police Establishment (Amendment) Act, 2021 and the amendment in clause (d) of Rule 56 of the Fundamental Rules, 1922 by the Fundamental (Amendment) Rules, 2021 are liable to be held ultra vires and set aside? (ii) As to whether the extensions granted to the tenure of the respondent No.2 as Director of Enforcement for a period of one year each vide orders dated 17th November 2021 and 17th November 2022 are legal and valid, and if not, whether liable to be set aside?

47. For answering the said questions, we will have to consider the legal history which gave rise to the provisions for appointment of the Central Vigilance Commissioner and the Director of CBI as well as the Director of Enforcement.

48. The case of Vineet Narain (supra) arose out of a complaint of inertia by the CBI in matters where the accusation made was against high dignitaries. However, as the case progressed, the Court posed a question to itself, as to whether it was within the domain of judicial review and whether the Court could provide for an effective instrument for activating the investigative process which was under the control of the executive? This Court attempted to innovate the procedure within the constitutional scheme of judicial review to permit intervention by the Court to find a solution to the problem.

49. This Court in the case of Vineet Narain (supra) found the necessity for the insulation of the investigating agencies like the CBI and the Revenue Department from any extraneous influence to enable them to discharge their duties in the manner required for proper implementation of the rule of law. This Court observed thus:

> "48. In view of the common perception shared by everyone including the Government of India and the Independent Review Committee (IRC) of the need for insulation of the CBI from extraneous influence of any kind, it is imperative that some action is urgently taken to prevent the continuance of this situation with a view to ensure proper implementation of the rule of law. This is the need of equality guaranteed in the Constitution. The right to equality in a situation like this is that of the Indian polity and not merely of a few individuals. The powers conferred on this Court by the Constitution are ample to remedy this defect and to ensure enforcement of the concept of equality."

50. This Court, therefore, issued following directions: "58. As a result of the aforesaid discussion, we hereby direct as under:

> I. CENTRAL BUREAU OF INVESTIGATION (CBI) AND CENTRAL VIGILANCE COMMISSION (CVC)

1. The Central Vigilance Commission (CVC) shall be given statutory status.

2. Selection for the post of Central Vigilance Commissioner shall be made by a Committee comprising the Prime Minister, Home Minister and the Leader of the Opposition from a panel of outstanding civil servants and others with impeccable integrity, to be furnished by the Cabinet Secretary. The appointment shall be made by the President on the basis of the recommendations made by the Committee. This shall be done immediately.

3. The CVC shall be responsible for the efficient functioning of the CBI. While Government shall remain answerable for the CBI's functioning, to introduce visible objectivity in the mechanism to be established for overviewing the CBI's working, the CVC shall be entrusted with the responsibility of superintendence over the CBI's functioning. The CBI shall report to the CVC about cases taken up by it for investigation; progress of investigations; cases in which charge-sheets are filed and their progress. The CVC shall review the progress of all cases moved by the CBI for sanction of prosecution of public servants which are pending with the competent authorities, specially those in which sanction has been delayed or refused.

4. The Central Government shall take all measures necessary to ensure that the CBI functions effectively and efficiently and is viewed as a non-partisan agency.

5. The CVC shall have a separate section in its Annual Report on the CBI's functioning after the supervisory function is transferred to it.

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

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

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

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

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

of Joint Director or above shall be referred to the Appointments Committee of the Cabinet (ACC) for decision.

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

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

13. The Director, CBI shall be responsible for ensuring the filing of charge-sheets in courts within the stipulated time-limits, and the matter should be kept under constant review by the Director, CBI. 14. A document on CBI's functioning should be published within three months to provide the general public with a feedback on investigations and information for redress of genuine grievances in a manner which does not compromise with the operational requirements of the CBI.

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

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

II. ENFORCEMENT DIRECTORATE

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

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

3. In view of the importance of the post of Director, Enforcement Directorate, it shall be upgraded to that of an Additional Secretary/Special Secretary to the Government.

4. Officers of the Enforcement Directorate handling sensitive assignments shall be provided adequate security to enable them to discharge their functions fearlessly.

5. Extensions of tenure up to the level of Joint Director in the Enforcement Directorate should be decided by the said Committee headed by the Central Vigilance Commissioner. 6. There shall be no premature media publicity by the CBI/Enforcement Directorate.

7. Adjudication/commencement of prosecution shall be made by the Enforcement Directorate within a period of one year.

8. The Director, Enforcement Directorate shall monitor and ensure speedy completion of investigations/adjudications and launching of prosecutions. Revenue Secretary must review their progress regularly.

9. For speedy conduct of investigations abroad, the procedure to approve filing of applications for Letters Rogatory shall be streamlined and, if necessary, Revenue Secretary authorised to grant the approval.

10. A comprehensive circular shall be published by the Directorate to inform the public about the procedures/systems of its functioning for the sake of transparency.

11. In-house legal advice mechanism shall be strengthened by appointment of competent legal advisers in the CBI/Directorate of Enforcement.

12. The Annual Report of the Department of Revenue shall contain a detailed account on the working of the Enforcement Directorate.

III. NODAL AGENCY

1. A Nodal Agency headed by the Home Secretary with Member (Investigation), Central Board of Direct Taxes, Director General, Revenue Intelligence, Director, Enforcement and Director, CBI as members, shall be constituted for coordinated action in cases having politicobureaucrat-criminal nexus.

2. The Nodal Agency shall meet at least once every month. 3. Working and efficacy of the Nodal Agency should be watched for about one year so as to improve it upon the basis of the experience gained within this period…."

51. In pursuance to the aforesaid directions issued by this Court, the Government initially issued ordinance and finally enacted the CVC Act.

52. Section 3 of the CVC Act deals with constitution of Central Vigilance Commission.

53. Section 4 of the CVC Act deals with appointment of Central Vigilance Commissioner and Vigilance Commissioners, which reads thus:

"4. Appointment of Central Vigilance Commissioner and Vigilance Commissioners.—

(1) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the President by warrant under his hand and seal: Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of—

(a) the Prime Minister — Chairperson;

(b) the Minister of Home Affairs — Member;

(c) the Leader of the Opposition in the House of the People — Member.

Explanation.—For the purposes of this subsection, "the Leader of the Opposition in the House of the People" shall, when no such Leader has been so recognised, include the

Leader of the single largest group in opposition of the Government in the House of the People.

(2) No appointment of a Central Vigilance Commissioner or a Vigilance Commissioner shall be invalid merely by reason of any vacancy in the Committee."

54. Section 6 of the CVC Act deals with removal of Central Vigilance Commissioner and Vigilance Commissioner, which reads thus:

"6. Removal of Central Vigilance Commissioner and Vigilance Commissioner.—

(1) Subject to the provisions of sub-section (3), the Central Vigilance Commissioner or any Vigilance Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Central Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought on such ground be removed.

(2) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Central Vigilance Commissioner or any Vigilance Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Central Vigilance Commissioner or any Vigilance Commissioner if the Central Vigilance Commissioner or such Vigilance Commissioner, as the case may be,— (a) is adjudged an insolvent; or (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or (c) engages during his term of office in any paid employment outside the duties of his office; or (d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Central Vigilance Commissioner or a Vigilance Commissioner.

(4) If the Central Vigilance Commissioner or any Vigilance Commissioner is or becomes in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour."

55. Section 25 of the CVC Act deals with appointments, etc. of officers of ED, which reads thus:

"25. Appointments, etc., of officers of Directorate of Enforcement.— Notwithstanding anything contained in the Foreign Exchange Management Act, 1999 (42 of 1999) or any other law for the time being in force,—

(a) the Central Government shall appoint a Director of Enforcement in the Directorate of Enforcement in the Ministry of Finance on the recommendation of the Committee consisting of—

(i) the Central Vigilance Commissioner —C hairperson ;

(ii) Vigilance Commissioners —M embers;

(iii) Secretary to the Government of India in charge of the Ministry of Home Affairs in the Central Government —M ember;

(iv) Secretary to the Government of India in charge of the Ministry of Personnel in the Central Government —M ember;

(v) Secretary to the Government of India in charge of the Department of Revenue, Ministry of Finance in the Central Government —M ember;

(b) while making a recommendation, the Committee shall take into consideration the integrity and experience of the officers eligible for appointment;

(c) no person below the rank of Additional Secretary to the Government of India shall be eligible for appointment as a Director of Enforcement;

(d) a Director of Enforcement shall continue to hold office for a period of not less than two years from the date on which he assumes office;

(e) a Director of Enforcement shall not be transferred except with the previous consent of the Committee referred to in clause (a);

(f) the Committee referred to in clause (a) shall, in consultation with the Director of Enforcement, recommend officers for appointment to the posts above the level of the Deputy Director of Enforcement and also recommend the extension or curtailment of the tenure of such officers in the Directorate of Enforcement;

(g) on receipt of the recommendation under clause (f), the Central Government shall pass such orders as it thinks fit to give effect to the said recommendation."

56. Similarly, by an amendment to DSPE Act by Act No. 45 of 2003 (CVC Act), a provision was made for a Committee for appointment of the Director of CBI, which reads thus:

"4-A. Committee for appointment of Director.—

(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 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.

(3) The Committee shall recommend a panel of officers— (a) on the basis of seniority, integrity and experience in the investigation of anticorruption 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."

57. Section 4-B of the DSPE Act deals with the terms and conditions of service of Director, which reads thus:

"4-B. 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 4-A."

58. It could thus be seen that in view of clause (d) of Section 25 of the CVC Act, as it existed prior to the amendment, it was provided that a Director of Enforcement shall continue to hold office for a period of not less than two years from the date on which he assumes office.

59. Similarly, in view of Section 4B of the DSPE Act, the Director of CBI was required to continue to hold office for a period of not less than two years from the date on which he assumes office. It also provided that the Director shall not be transferred except with the previous consent of the Committee referred to in subsection (1) of Section 4A.

60. By the Central Vigilance Commission (Amendment) Act, 2021, in clause (d) of Section 25 of the CVC Act, the following provisos have been inserted:

"Provided that the period for which the Director of Enforcement holds the office on his initial appointment may, in public interest, on the recommendation of the Committee under clause (a) and for the reasons to be recorded in writing, be extended up to one year at a time: Provided further that no such extension shall be granted after the completion of a period of five years in total including the period mentioned in the initial appointment."

61. Similarly, by the Delhi Special Police Establishment (Amendment) Act, 2021, in sub-section (1) of Section 4B of the DSPE Act, the following provisos have been inserted:

"Provided that the period for which the Director holds the office on his initial appointment may, in public interest, on the recommendation of the Committee under sub-section (1) of section 4A and for the reasons to be recorded in writing, be extended up to one year at a time: Provided further that no such extension shall be granted after the completion of a period of five years in total including the period mentioned in the initial appointment."

62. Similarly, in clause (d) of rule 56 of the Fundamental Rules, 1922, the fifth proviso has also been substituted, which is as under:

"Provided also that the Central Government may, if it considers necessary in public interest so to do, give extension in service to the Defence Secretary, Home Secretary, Director of Intelligence Bureau, Secretary of Research and Analysis Wing and Director of Central Bureau of

Investigation appointed under the Delhi Special Police Establishment Act, 1946 (25 of 1946) and Director of Enforcement in the Directorate of Enforcement appointed under the Central Vigilance Commission Act, 2003 (45 of 2003) in the Central Government for such period or periods as it may deem proper on a case-to-case basis for reasons to be recorded in writing, subject to the condition that the total term of such Secretaries or Directors, as the case may be, who are given such extension in service under this rule, does not exceed two years or the period provided in the respective Act or rules made thereunder, under which their appointments are made."

63. These two amendments to the CVC Act and the DSPE Act along with the amendment to the Fundamental Rules, 1922 are under challenge in the present proceedings.

64. What has been provided by the Amendments to the CVC Act and the DSPE Act is that the period for which such Director of Enforcement or the Director of CBI holds office on his initial appointment may, in public interest, on the recommendation of the Committee, which under the statutory scheme was required to recommend the appointment of such Director, for the reasons to be recorded in writing, be extended up to one year at a time. The second proviso provides that no such extension shall be granted after the completion of a period of five years in total including the period mentioned in the initial appointment.

65. It is the contention of the petitioners that various judgments of this Court have emphasized the necessity for the purpose of ensuring complete insulation of the office of the Director of CBI/Director of Enforcement from all kinds of extraneous influences, as may be, as well as for upholding the integrity and independence of the institution of CBI/ED as a whole. It is contended that the Amendments, which enable the Government to provide for extension and that too for a period of one year at a time and which could extend to three extensions in total, would enable the Government to apply a 'carrot and stick' policy. It is contended that if the Director of CBI as well as the Director of Enforcement acts as per the desire of the Government, they could be provided extensions of their tenure. Per contra, if such a Director does not act as per the desire of the Government, he would be denied extensions. It is, thus, submitted that the very purpose of insulating these premium Agencies from extraneous pressures by the Government is sought to be wiped by the impugned Amendments.

66. For considering the issue with regard to validity of the Amendments, it will be apposite to refer to some of the judgments of this Court delineating the scope of the judicial review in examining the legislative functions of the Legislature.

67. A bench of three learned Judges of this Court in the case of Asif Hameed and others v. State of Jammu and Kashmir and others*[1989 Supp (2) SCC 364]* observed thus:

> "17. Before adverting to the controversy directly involved in these appeals we may have a fresh look on the inter se functioning of the three organs of democracy under our Constitution. Although the doctrine of separation of powers has not been recognised under the Constitution in its absolute rigidity but the Constitution makers have meticulously defined the functions of various organs of the State. legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs legislature and executive, the two facets of people's will, they have all the powers including that of finance. Judiciary has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic

justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self-imposed discipline of judicial restraint.

18. Frankfurter, J. of the U.S. Supreme Court dissenting in the controversial expatriation case of Trop v. Dulles [356 US 86] observed as under: "All power is, in Madison's phrase, "of an encroaching nature". Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint.... Rigorous observance of the difference between limits of power and wise exercise of power — between questions of authority and questions of prudence — requires the most alert appreciation of this decisive but subtle relationship of two concepts that too easily coalesce. No less does it require a disciplined will to adhere to the difference. It is not easy to stand aloof and allow want of wisdom to prevail to disregard one's own strongly held view of what is wise in the conduct of affairs. But it is not the business of this Court to pronounce policy. It must observe a fastidious regard for limitations on its own power, and this precludes the court's giving effect to its own notions of what is wise or politic. That self-restraint is of the essence in the observance of the judicial oath, for the Constitution has not authorized the judges to sit in judgment on the wisdom of what Congress and the executive branch do."

19. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an Appellate Authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers."

68. It could thus be seen that the role of the judiciary is to ensure that the aforesaid two organs of the State i.e. the Legislature and the Executive function within the constitutional limits. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The role of this Court is limited to examine as to whether the Legislature or the Executive has acted within the powers and functions assigned under the Constitution. However, while doing so, the court must remain within its self-imposed limits.

69. Recently, this Court in the case of Binoy Viswam v. Union of India and others*[(2017) 7 SCC 59]*, took survey of the relevant judgments on the issue and observed thus:

"78. With this, we advert to the discussion on the grounds of judicial review that are available to adjudge the validity of a piece of legislation passed by the legislature. We have already mentioned that a particular law or a provision contained in a statute can be invalidated on two grounds, namely :

(i) it is not within the competence of the legislature which passed the law, and/or

(ii) it is in contravention of any of the fundamental rights stipulated in Part III of the Constitution or any other right/provision of the Constitution. These contours of the judicial review are spelled out in the clear terms in Rakesh Kohli [State of M.P. v. Rakesh Kohli, (2012) 6 SCC 312 : (2012) 3 SCC (Civ) 481] , and particularly in the following paragraphs : (SCC pp. 321-22 & 325-27, paras 16-17, 26-28 & 30)

"16. The statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. The court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. Sans flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature is not declared bad.

17. This Court has repeatedly stated that legislative enactment can be struck down by court only on two grounds, namely (i) that the appropriate legislature does not have the competence to make the law, and (ii) that it does not (sic) take away or abridge any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. In McDowell and Co. [State of A.P. v. McDowell & Co., (1996) 3 SCC 709] while dealing with the challenge to an enactment based on Article 14, this Court stated in para 43 of the Report as follows : (SCC pp. 737-38)

'43. … A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone viz. (1) lack of legislative competence, and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground. … if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by sub-clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom."

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26. In Mohd. Hanif Quareshi [Mohd. Hanif Quareshi v. State of Bihar, AIR 1958 SC 731] , the Constitution Bench further observed that there was always a presumption in favour of constitutionality of an enactment and the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. It stated in para 15 of the Report as under : (AIR pp. 740- 41)

> '15. … The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume

> every state of facts which can be conceived existing at the time of legislation."

27. The above legal position has been reiterated by a Constitution Bench of this Court in Mahant Moti Das v. S.P. Sahi [Mahant Moti Das v. S.P. Sahi, AIR 1959 SC 942] .

28. In Hamdard Dawakhana v. Union of India [Hamdard Dawakhana v. Union of India, AIR 1960 SC 554 : 1960 Cri LJ 735] , inter alia, while referring to the earlier two decisions, namely, Bengal Immunity Co. Ltd. [Bengal Immunity Co. Ltd. v. State of Bihar, AIR 1955 SC 661] and Mahant Moti Das [Mahant Moti Das v. S.P. Sahi, AIR 1959 SC 942] , it was observed in para 8 of the Report as follows : (Hamdard Dawakhana case [Hamdard Dawakhana v. Union of India, AIR 1960 SC 554 : 1960 Cri LJ 735] , AIR p. 559)

> '8. Therefore, when the constitutionality of an enactment is challenged on the ground of violation of any of the articles in Part III of the Constitution, the ascertainment of its true nature and character becomes necessary i.e. its subject-matter, the area in which it is intended to operate, its purport and intent have to be determined. In order to do so it is legitimate to take into consideration all the factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress, the remedy for the disease which the legislature resolved to cure and the true reason for the remedy….'

In Hamdard Dawakhana [Hamdard Dawakhana v. Union of India, AIR 1960 SC 554 : 1960 Cri LJ 735] , the Court also followed the statement of law in Mahant Moti Das [Mahant Moti Das v. S.P. Sahi, AIR 1959 SC 942] and the two earlier decisions, namely, Charanjit Lal Chowdhury v. Union of India [Charanjit Lal Chowdhury v. Union of India, 1950 SCC 833 : AIR 1951 SC 41 : 1950 SCR 869] and State of Bombay v. F.N. Balsara [State of Bombay v. F.N. Balsara, 1951 SCC 860 : AIR 1951 SC 318 : (1951) 52 Cri LJ 1361] and reiterated the principle that presumption was always in favour of constitutionality of an enactment.

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30. A well-known principle that in the field of taxation, the legislature enjoys a greater latitude for classification, has been noted by this Court in a long line of cases. Some of these decisions are Steelworth Ltd. v. State of Assam [Steelworth Ltd. v. State of Assam, 1962 Supp (2) SCR 589] , Gopal Narain v. State of U.P. [Gopal Narain v. State of U.P., AIR 1964 SC 370] , Ganga Sugar Corpn. Ltd. v. State of U.P. [Ganga Sugar Corpn. Ltd. v. State of U.P., (1980) 1 SCC 223 : 1980 SCC (Tax) 90] , R.K. Garg v. Union of India [R.K. Garg v. Union of India, (1981) 4 SCC 675 : 1982 SCC (Tax) 30] and State of W.B. v. E.I.T.A. India Ltd. [State of W.B. v. E.I.T.A. India Ltd., (2003) 5 SCC 239] " (emphasis in original)

79. Again, in Ashoka Kumar Thakur v. Union of India [Ashoka Kumar Thakur v. Union of India, (2008) 6 SCC 1 : 3 SCEC 35] , this Court made the following pertinent observations : (SCC p. 524, para 219)

> "219. A legislation passed by Parliament can be challenged only on constitutionally recognised grounds. Ordinarily, grounds of attack of a legislation is whether the legislature has legislative competence or whether the legislation is ultra vires the provisions of the Constitution. If any of the provisions of the legislation violates fundamental rights or any other provisions of the Constitution, it could certainly be a valid ground to set aside the legislation by invoking the power of judicial review. A legislation could also be challenged as unreasonable if it violates the principles of equality adumbrated in our Constitution or it unreasonably restricts the fundamental rights under Article 19 of the Constitution. A legislation cannot be challenged simply on the ground of unreasonableness because that by itself does not constitute a ground. The validity of a constitutional amendment and the validity of plenary legislation have to be decided purely as questions of constitutional law. This Court in State of Rajasthan v. Union of India [State of Rajasthan v. Union of India, (1977) 3 SCC 592] said : (SCC p. 660, para 149)
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> > '149. … if a question brought before the court is purely a political question not involving determination of any legal or constitutional right or obligation, the court would not entertain it, since the court is concerned only with adjudication of legal rights and liabilities.' Therefore, the plea of the petitioner that the legislation itself was intended to please a section of the community as part of the vote catching mechanism is not a legally acceptable plea and it is only to be rejected."

80. Furthermore, it also needs to be specifically noted that this Court emphasised that apart from the aforesaid two grounds no third ground is available to invalidate any piece of legislation. In this behalf it would be apposite to reproduce the following observations from State of A.P. v. McDowell & Co. [State of A.P. v. McDowell & Co., (1996) 3 SCC 709] , which is a judgment rendered by a three- Judge Bench of this Court : (SCC pp. 737- 38, para 43)

> "43. … A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone viz. (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground. We do not wish to enter into a discussion of the concepts of procedural unreasonableness and substantive unreasonableness—concepts inspired by the decisions of United States Supreme Court. Even in USA, these concepts and in particular the concept of substantive due process have proved to be of unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the courts as arbiters of the wisdom of the legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by subclauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary [An expression used widely and rather indiscriminately — an expression of inherently imprecise import. The extensive use of this expression in India reminds one of what Frankfurter, J. said in Hattie Mae Tiller v. Atlantic Coast Line Railroad Co., 87 L Ed 610 : 318 US 54 (1943):

> "The phrase begins life as a literary expression; its felicity leads to its lazy repetition and repetition soon establishes it as a legal formula, undiscriminatingly used to express different and sometimes contradictory ideas", said the learned Judge.] or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds viz. (i) unreasonableness, which can more appropriately be called irrationality, (ii) illegality, and (iii) procedural impropriety (see Council of Civil Service Unions v. Minister for the Civil Service [Council of Civil Service Unions v. Minister for the Civil Service, 1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] which decision has been accepted by this Court as well). The applicability of doctrine of proportionality even in administrative law sphere is yet a debatable issue. (See the opinions of Lords Lowry and Ackner in R. v. Secy. of State for the Home Deptt., ex p Brind [R. v. Secy. of State for the Home Deptt., ex p Brind, (1991) 1 AC 696 : (1991) 2 WLR 588 : (1991) 1 All ER 720 (HL)] , AC at pp. 766-67 and 762.) It would be rather odd if an enactment were to be struck down by applying the said principle when its applicability even in administrative law sphere is not fully and finally settled."

81. Another aspect in this context, which needs to be emphasised, is that a legislation cannot be declared unconstitutional on the ground that it is "arbitrary" inasmuch as examining as to whether a particular Act is arbitrary or not implies a value judgment and the courts do not examine the wisdom of legislative choices and, therefore, cannot undertake this exercise. This was so recognised in a recent judgment of this Court Rajbala v. State of Haryana [Rajbala v. State of Haryana, (2016) 2 SCC 445] wherein this Court held as under : (SCC p. 481, paras 64-65)

> "64. From the above extract from McDowell & Co. case [State of A.P. v. McDowell & Co., (1996) 3 SCC 709] it is clear that the courts in this country do not undertake the task of declaring a piece of legislation unconstitutional on the ground that the legislation is "arbitrary" since such an exercise implies a value judgment and courts do not examine the wisdom of legislative choices unless the legislation is otherwise violative of some specific provision of the Constitution. To undertake such an examination would amount to virtually importing the doctrine of "substantive due process" employed by the American Supreme Court at an earlier point of time while examining the constitutionality of Indian legislation. As pointed out in the above extract, even in United States the doctrine is currently of doubtful legitimacy. This Court long back in A.S. Krishna v. State of Madras [A.S. Krishna v. State of Madras, AIR 1957 SC 297 : 1957 Cri LJ 409] declared that the doctrine of due process has no application under the Indian Constitution. As pointed out by Frankfurter, J., arbitrariness became a mantra. 65. For the above reasons, we are of the opinion that it is not permissible for this Court to declare a statute unconstitutional on the ground that it is "arbitrary"."

82. Same sentiments were expressed earlier by this Court in K.T. Plantation (P) Ltd. [K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414] in the following words : (SCC p. 58, para 205) "205. Plea of unreasonableness, arbitrariness, proportionality, etc. always raises an element of subjectivity on which a court cannot strike down

a statute or a statutory provision, especially when the right to property is no more a fundamental right. Otherwise the court will be substituting its wisdom to that of the legislature, which is impermissible in our constitutional democracy."

A fortiori, a law cannot be invalidated on the ground that the legislature did not apply its mind or it was prompted by some improper motive. 83. It is, thus, clear that in exercise of power of judicial review, the Indian courts are invested with powers to strike down primary legislation enacted by Parliament or the State Legislatures. However, while undertaking this exercise of judicial review, the same is to be done at three levels. In the first stage, the Court would examine as to whether impugned provision in a legislation is compatible with the fundamental rights or the constitutional provisions (substantive judicial review) or it falls foul of the federal distribution of powers (procedural judicial review). If it is not found to be so, no further exercise is needed as challenge would fail. On the other hand, if it is found that legislature lacks competence as the subject legislated was not within the powers assigned in the List in Schedule VII, no further enquiry is needed and such a law is to be declared as ultra vires the Constitution. However, while undertaking substantive judicial review, if it is found that the impugned provision appears to be violative of fundamental rights or other constitutional rights, the Court reaches the second stage of review. At this second phase of enquiry, the Court is supposed to undertake the exercise as to whether the impugned provision can still be saved by reading it down so as to bring it in conformity with the constitutional provisions. If that is not achievable then the enquiry enters the third stage. If the offending portion of the statute is severable, it is severed and the Court strikes down the impugned provision declaring the same as unconstitutional. 84. Keeping in view the aforesaid parameters we, at this stage, want to devote some time discussing the arguments of the petitioners based on the concept of "limited Government".

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88. Undoubtedly, we are in the era of liberalised democracy. In a democratic society governed by the Constitution, there is a strong trend towards the constitutionalisation of democratic politics, where the actions of democratically elected Government are judged in the light of the Constitution. In this context, judiciary assumes the role of protector of the Constitution and democracy, being the ultimate arbiter in all matters involving the interpretation of the Constitution.

89. Having said so, when it comes to exercising the power of judicial review of a legislation, the scope of such a power has to be kept in mind and the power is to be exercised within the limited sphere assigned to the judiciary to undertake the judicial review. This has already been mentioned above. Therefore, unless the petitioner demonstrates that Parliament, in enacting the impugned provision, has exceeded its power prescribed in the Constitution or this provision violates any of the provision, the argument predicated on "limited governance" will not succeed. One of the aforesaid ingredients needs to be established by the petitioners in order to succeed."

70. It could thus be seen that this Court has held that the statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. To do so, the Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. It has been held that unless there is flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature cannot be declared bad.

71. It has been the consistent view of this Court that legislative enactment can be struck down only on two grounds. Firstly, that the appropriate legislature does not have the competence to make the law; and secondly, that it takes away or abridges any of the fundamental rights enumerated in Part III of the

Constitution or any other constitutional provisions. It has been held that no enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. It has been held that Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom.

72. It has been held by this Court that there is one and only one ground for declaring an Act of the legislature or a provision in the Act to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. It has further been held that if two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. It has been held that the Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope.

73. It has consistently been held that there is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt. It has been held that if the law which is passed is within the scope of the power conferred on a legislature and violates no restrictions on that power, the law must be upheld whatever a court may think of it.

74. It could thus be seen that the challenge to the legislative Act would be sustainable only if it is established that the legislature concerned had no legislative competence to enact on the subject it has enacted. The other ground on which the validity can be challenged is that such an enactment is in contravention of any of the fundamental rights stipulated in Part III of the Constitution or any other provision of the Constitution. Another ground as could be culled out from the recent judgments of this Court is that the validity of the legislative act can be challenged on the ground of manifest arbitrariness. However, while doing so, it will have to be remembered that the presumption is in favour of the constitutionality of a legislative enactment.

75. In the present case, it is nobody's case that Parliament did not have power to enact on the subject on which the aforesaid Amendments have been enacted. As such, the said ground is not available to the petitioners.

76. The next ground on which the validity of the aforesaid Amendments could be challenged is, as to whether they violate any of the fundamental rights stipulated in Part III of the Constitution or any other provision of the Constitution.

77. It is sought to be urged that the aforesaid Amendments would defeat the directive issued by this court to have a fixed tenure of the Director of CBI/Director of Enforcement and permit a 'carrot and stick' policy to be adopted by the Executive. It is sought to be urged that if the aforesaid Amendments are permitted to exist, it will frustrate the very purpose of insulating the aforesaid high posts from extraneous pressures. Let us consider this submission.

78. Insofar as the Director of Enforcement is concerned, the Central Government can appoint such a Director only on the recommendation of the Committee consisting of: (i) the Central Vigilance Commissioner (Chairman); (ii) Vigilance Commissioners (Members); (iii) Secretary to the Government of India in-charge of the Ministry of Personnel in the Central Government (Member); (iv) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government (Member); (v) Secretary to the Government of India in-charge of the Department of Revenue, Ministry of Finance in the Central Government (Member).

79. It can thus be seen that a person can be appointed as Director of Enforcement only if the aforesaid Committee makes a recommendation to that effect. The said Committee, inter alia, consists of the Central Vigilance Commissioner as well as the Vigilance Commissioners.

80. As pointed out herein above, Section 4 of the CVC Act deals with appointment of Central Vigilance Commissioner and Vigilance Commissioners. The appointment of Central Vigilance Commissioner and Vigilance Commissioners can be made only after a Committee consisting of (a) the Prime Minister (Chairman); (b) the Minister of Home Affairs (Member); and (c) the Leader of the Opposition in the House of the People (Member) recommends for the same. The explanation thereto provides that when no such Leader of the Opposition in the House of the People has been so recognized, the Committee shall include the Leader of the single largest group in opposition of the Government in the House of the People.

81. A perusal of Section 6 of the CVC Act would reveal that a very stringent provision has been made for removal of the Central Vigilance Commissioner and the Vigilance Commissioners. They can be removed from the office only by an order of the President on the ground of proved misbehaviour or incapacity and that too, only after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Central Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought on such ground be removed.

82. It is, thus, clear that the procedure for removal of the Central Vigilance Commissioner or the Vigilance Commissioner is very stringent. Unless on a reference made by the President to the Supreme Court, the Supreme Court conducts an inquiry and reports that such Central Vigilance Commissioner or the Vigilance Commissioner, as the case may be, ought to be removed on the ground of proved misbehaviour or incapacity, they cannot be removed. As such, a very strong protection has been provided to these officers to act independently and the Statute insulates them from extraneous pressures.

83. As already discussed herein above, the Committee which recommends appointment of the Director of Enforcement consists of the Central Vigilance Commissioner as well as the Vigilance Commissioner. It is to be noted that this Court in the case of Vineet Narain (supra) directed a Selection Committee for appointment to the post of Director of Enforcement headed by the Central Vigilance Commissioner, and including the Home Secretary, Secretary (Personnel) and Revenue Secretary. However, Section 25 of the CVC Act provides for a Committee, which, apart from aforesaid three Members also includes the Vigilance Commissioners.

84. It could thus be seen that the constitution of the Committee for appointment of Director of Enforcement is wider than what is ordered by this Court in the case of Vineet Narain (supra) and consisting of Central Vigilance Commissioner as well as Vigilance Commissioners.

85. As already observed herein above, there is safeguard in the statute which insulate the office of the Central Vigilance Commissioner and the Vigilance Commissioner from extraneous pressures and permits them to act independently.

86. Similarly, the appointment of Director of CBI is to be made only after a candidate is recommended by the Committee consisting of: (i) The Prime Minister (Chairperson); (ii) The Leader of Opposition recognised as such in the House of the People or where there is no such Leader of Opposition, then, the Leader of the single largest Opposition Party in that House (Member); (iii) The Chief Justice of India or Judge of the Supreme Court nominated by him (Member).

87. It is to be noted that insofar as the appointment of the Director of CBI is concerned, this Court in the case of Vineet Narain (supra) had directed that the recommendations were to be made by a Committee headed by the Central Vigilance Commissioner with the Home Secretary and Secretary (Personnel) as

Members. However, Section 4A of the DSPE Act provides for a Committee, which is consisting of the Members which are at much higher pedestal. It is to be chaired by the Prime Minister, whereas the Chief Justice of India or his/her nominee and the Leader of Opposition in the House of the People are its Members. Therefore, the appointment of the Director of CBI cannot be made unless it is recommended by the High-Level Committee consisting of the Prime Minister; the Leader of Opposition; and the Chief Justice of India or Judge of the Supreme Court nominated by him/her.

88. It is to be noted that the aforesaid provisions have been made in order to give effect to the directions issued by this Court in the case of Vineet Narain (supra).

89. This Court in the case of Vineet Narain (supra) has issued a specific direction that the Director of CBI as well as the Director of Enforcement shall have a minimum tenure of two years.

90. What has been provided by the impugned Amendments is that the period for which the initial appointment has been made could, in public interest, be extended up to one year at a time. However, this can be done only on the recommendation of the Committee which is constituted for their appointments. The second proviso further provided that no such extension shall be granted after the completion of a period of five years in total including the period mentioned in the initial appointment. The impugned Amendments empower the Government to extend the tenure of the incumbent in the said office by a period of one year at a time subject to the maximum period of five years including the period mentioned in the initial appointment. As already stated herein above, such extensions can be granted by the Government only if the Committees, which are constituted for recommending their appointment, recommend their extension, in public interest and also record the reasons in writing.

91. It is, thus, clear that it is not at the sweet-will of the Government that the extensions can be granted to the incumbents in the office of the Director of CBI/Director of Enforcement. It is only on the basis of the recommendations of the Committees which are constituted to recommend their appointment and that too when it is found in public interest and when the reasons are recorded in writing, such an extension can be granted by the Government.

92. What has been directed by this Court in the case of Vineet Narain (supra) and in subsequent judgments relied on by the petitioners is that such Director should have a minimum tenure of two years irrespective of their date of superannuation. By the impugned Amendments, the said period is not tinkered with. What has been done is only a power is given to extend their period for a period of one year at a time, subject to a maximum number of three such extensions. However, this has to be done only when the Committee which is constituted to recommend their appointment finds it necessary, in public interest, to grant such extension. It is further required to record the reasons in writing for the said purpose.

93. As already discussed herein above, the aforesaid provisions with regard to appointment have been enacted in pursuance to the directions given by this Court in the case of Vineet Narain (supra). When a committee can be trusted with regard to recommending their initial appointment, we see no reason as to why such committees cannot be trusted to consider as to whether the extension is required to be given in public interest or not. At the cost of repetition, such Committee is also required to record reasons in writing in support of such recommendations.

94. We are, therefore, unable to accept the arguments that the impugned Amendments grant arbitrary power to the Government to extend the tenure of the Director of ED/CBI and has the effect of wiping out the insulation of these offices from extraneous pressures.

95. Insofar as challenge to the amendment to the fifth proviso to clause (d) of Rule 56 of the Fundamental Rules, 1922 is concerned, it will be relevant to refer to the fifth proviso to clause (d) of Rule 56, which existed prior to the Amendment. It reads thus:

> "Provided also that the Central Government may, if it considers necessary in public interest so to do, give extension in service to the Defence Secretary, Home Secretary, Director, Intelligence Bureau, Secretary, Research and Analysis Wing and Director, Central Bureau of Investigation in the Central Government for such period or periods as it may deem proper on a case-to-case basis, subject to the condition the total term of such Secretaries or Directors, as the case may be, who are given such extension in service under this rule, does not exceed two years. Provided also that notwithstanding anything contained in the fifth proviso, the Central Government may, if considers it necessary, in public interest, so to do, give an extension in service for a further period not exceeding three months beyond the said period of two years to the Home Secretary and the Defence Secretary."

96. The amended fifth proviso to clause (d) of Rule 56 of the Fundamental Rules, 1922 has already been reproduced by us in paragraph 62.

97. It can thus be seen that by virtue of the Amendment the power which was available with the Central Government to grant extension, if it considers necessary in public interest so to do, in case of certain officers, has now been also extended to the Director of CBI appointed under the DSPE Act and Director of Enforcement in the ED appointed under the CVC Act. The second change that has been brought is that such extension in service does not exceed two years or the period provided in the respective Act or rules made thereunder, under which their appointments are made.

98. Since we have already held that the amendment to clause (d) of Section 25 of the CVC Act and to sub-section (1) of Section 4B of the DSPE Act is not unconstitutional, we see no reason to hold that the amendment to Fundamental Rules, 1922 is impermissible in law. Consequently, we are of the considered view that the challenge to validity of Central Vigilance Commission (Amendment) Act, 2021, the Delhi Special Police Establishment (Amendment) Act, 2021, and the Fundamental (Amendment) Rules, 2021 fails and the writ petitions at the behest of the petitioners to that extent are liable to be rejected.

99. That leaves us with the next question, as to whether the impugned orders dated 17th November, 2021 and 17th November 2022, which grant extension for a period of one year each, are valid in law or not.

100. In the case of Common Cause (2021), what was under challenge was the order dated 13th November 2020, vide which the President of India had approved the modification of the order dated 19th November 2018, by amending the period of appointment from two years to three years. As such, in effect, what was under challenged was one year's extension granted to the tenure of the second respondent. It was sought to be urged before this Court that it was not permissible for the Government to extend the period of tenure beyond two years. In paragraph 15, this Court posed the following question for consideration:

> "The question that remains to be answered is whether there can be extension of tenure of a person who has been appointed as a Director of Enforcement for a period of two years and who has attained the age of superannuation in the interregnum i.e. before the expiry of two years."

101. In paragraph 20, this Court observed thus:

> "20. We have already held that Section 25(f) of the CVC Act has to be read as the tenure of office of the Director of Enforcement is for a minimum period of two years. There is no proscription on the Government to appoint a Director of Enforcement beyond a period of two years. The reasons

for fixing the tenure for a minimum period of two years have been discussed in the earlier paragraphs. We are not in agreement with the submissions made by the learned Senior Counsel for the Petitioner that extension of tenure for officers above the rank of Deputy Director of Enforcement provided in sub-Section (f) of Section 25 has to be read as a bar on the power of the Government to extend tenure of the Director of Enforcement. As the tenure of appointment of Director of Enforcement is not a maximum period of two years, a person can be appointed as Director of Enforcement for a period of more than two years. If the Government has the power to appoint a person as Director of Enforcement for a period of more than two years, Section 25 of the CVC Act cannot be said to be inconsistent with Section 21 of the General Clauses Act. Following the dictum of this Court in State of Punjab v. Harnek Singh (supra) in which it was held that General Clauses Act has to be read into all Central Acts unless specifically excluded, we are of the considered view that the rule of construction embodied in Section 21 of the General Clauses Act has reference to the context and subject matter of Section 25 of the CVC Act. The judgment of the Constitution Bench of this Court in Kamla Prasad Khetan (supra) is applicable to the facts of this case and the judgments relied upon by the Petitioner which are referred to above do not have any application to the facts of this case."

102. It could thus clearly be seen that this Court rejected the contention that the Government does not have a power to extend the tenure of the Director of Enforcement beyond a period of one year. In spite of holding this, this Court specifically observed thus in paragraph 23:

> "23. The justification given by the Union of India for extension of the tenure of second Respondent is that important investigations are at a crucial stage in trans-border crimes. The decision to extend the tenure of the second Respondent is pursuant to the recommendation made by the highpowered committee. Though we have upheld the power of the Union of India to extend the tenure of Director of Enforcement beyond the period of two years, we should make it clear that extension of tenure granted to officers who have attained the age of superannuation should be done only in rare and exceptional cases. Reasonable period of extension can be granted to facilitate the completion of ongoing investigations only after reasons are recorded by the Committee constituted under Section 25(a) of the CVC Act. Any extension of tenure granted to persons holding the post of Director of Enforcement after attaining the age of superannuation should be for a short period. We do not intend to interfere with the extension of tenure of the second Respondent in the instant case for the reason that his tenure is coming to an end in November, 2021. We make it clear that no further extension shall be granted to the second Respondent." [emphasis supplied]

103. As such, it is clear that this Court issued a specific mandamus that no further extension shall be granted to the second respondent. Undisputedly, the Union of India as well as the respondent No.2-Sanjay Kumar Mishra in Writ Petition (Civil) No. 456 of 2022 herein were parties to the said proceedings.

104. A Constitution Bench of learned Seven Judges of this Court in the case of Madan Mohan Pathak and another v. Union of India and others23 was considering the question of constitutional validity of the Life Insurance Corporation (Modification of Settlement) Act, 1976. In exercise of power vested under Section 49 of the Life Insurance Corporation Act, 1956, right from 1959, various settlements were arrived at between the Life Insurance Corporation ("LIC" for short) and its employees from time to time in regard to various matters relating to terms and conditions of service of Class III and Class IV 23 (1978) 2 SCC 50 employees. The said settlements were also approved by the Board of the LIC as also by the Central Government. An Ordinance was promulgated by the President of India on 25th September 1975, called the Payment of Bonus (Amendment) Ordinance 1975. Subsequently, the said Ordinance was replaced by the Payment of Bonus (Amendment) Act, 1976, which was brought into force with retrospective effect

from the date of the Ordinance, i.e., 25th September 1975. This amending law considerably curtailed the rights of the employees to bonus in industrial establishments. However, it had no impact insofar as the employees of the LIC were concerned. However, the employees of the LIC were denied the benefits which they were entitled to. In these circumstances, the All-India Insurance Employees' Association and some others filed writ petition(s) before the High Court of Calcutta for a writ of mandamus and prohibition directing the LIC to act in accordance with the terms of the Settlement dated 24th January 1974 read with the administrative instructions.

105. The learned Single Judge of the Calcutta High Court allowed the writ petition and issued a writ of mandamus and prohibition as prayed for in the said writ petition. The LIC preferred a Letters Patent Appeal ("LPA" for short). However, during the pendency of the LPA, on 29th May, 1976, the Act impugned before this Court was enacted. The effect of the enactment was to annul the benefits which the employees of the LIC were entitled to in view of the mandamus issued by the Calcutta High Court.

106. Bhagwati, J (speaking for himself, Krishna Iyer and Desai, JJ.) observed thus:

> "9. ….We are, therefore, of the view that, in any event, irrespective of whether the impugned Act is constitutionally valid or not, the Life Insurance Corporation is bound to obey the writ of mandamus issued by the Calcutta High Court and to pay annual cash bonus for the year April 1, 1975 to March 31, 1976 to Class III and Class IV employees."

107. Beg. C.J. in his concurring judgment observed thus:

> "32. I may, however, observe that even though the real object of the Act may be to set aside the result of the mandamus issued by the Calcutta High Court, yet, the section does not mention this object at all. Probably this was so because the jurisdiction of a High Court and the effectiveness of its orders derived their force from Article 226 of the Constitution itself. These could not be touched by an ordinary act of Parliament. Even if Section 3 of the Act seeks to take away the basis of the judgment of the Calcutta High Court, without mentioning it, by enacting what may appear to be a law, yet, I think that, where the rights of the citizen against the State are concerned, we should adopt an interpretation which upholds those rights. Therefore, according to the interpretation I prefer to adopt the rights which had passed into those embodied in a judgment and became the basis of a mandamus from the High Court could not be taken away in this indirect fashion."

108. It could thus be clearly seen that the Constitution Bench of learned Seven Judges of this Court clearly held that by a subsequent enactment, the writ of mandamus issued by the Calcutta High Court crystalizing the rights and liabilities between the parties cannot be annulled.

109. It will also be apposite to refer to the following observation of the Constitution Bench of this Court in the case of Cauvery Water Disputes Tribunal, Re. (supra), which reads thus:

> "76. The principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter partes and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate court or tribunal."

110. Relying on the aforesaid observation, this Court in the case of S.R. Bhagwat and others v. State of Mysore*[(1995) 6 SCC 16]* observed thus:

> "12. It is now well settled by a catena of decisions of this Court that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance overrules such judgment and is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect. We may only refer to two of these judgments.
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> xxx xxx xxx xxx xxx xxx
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> 15. We may note at the very outset that in the present case the High Court had not struck down any legislation which was sought to be re-enacted after removing any defect retrospectively by the impugned provisions. This is a case where on interpretation of existing law, the High Court had given certain benefits to the petitioners. That order of mandamus was sought to be nullified by the enactment of the impugned provisions in a new statute. This in our view would be clearly impermissible legislative exercise."

111. In the present case also, we may point out that in Common Cause (2021), this Court had not struck down any law, but had issued a mandamus which was binding on the parties before it.

112. A similar view has been taken by this Court in the case of Medical Council of India v. State of Kerala and others*[(2019) 13 SCC 185]*.

113. Recently, in the case of Madras Bar Association v. Union of India and another*[2021 SCC OnLine SC 463= (2022) 12 SCC 455]*, a bench of learned three Judges of this Court, after considering the earlier judgments of this Court on the issue of permissibility of legislative override, observed thus:

> "50. The permissibility of legislative override in this country should be in accordance with the principles laid down by this Court in the aforementioned as well as other judgments, which have been culled out as under:
>
> 50.1. The effect of the judgments of the Court can be nullified by a legislative act removing the basis of the judgment. Such law can be retrospective. Retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. [Lohia Machines Ltd. v. Union of India, (1985) 2 SCC 197 : 1985 SCC (Tax) 245]
>
> 50.2. The test for determining the validity of a validating legislation is that the judgment pointing out the defect would not have been passed, if the altered position as sought to be brought in by the validating statute existed before the Court at the time of rendering its judgment. In other words, the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed.
>
> 50.3. Nullification of mandamus by an enactment would be impermissible legislative exercise (see : S.R. Bhagwat [S.R. Bhagwat v. State of Mysore, (1995) 6 SCC 16 : 1995 SCC (L&S) 1334]). Even interim directions cannot be reversed by a legislative veto (see : Cauvery Water Disputes Tribunal [Cauvery Water Disputes Tribunal, In re, 1993 Supp (1) SCC 96 (2)] and Medical Council of India v. State of Kerala [Medical Council of India v. State of Kerala, (2019) 13 SCC 185]).

> 50.4. Transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the rule of law and of Article 14 of the Constitution of India."

114. It could, thus, clearly be seen that this Court has held that the effect of the judgments of this court can be nullified by a legislative act removing the basis of the judgment. It has further been held that such law can be retrospective. It has, however, been held that retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. It has been held that the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed. This Court has, however, clearly held that nullification of mandamus by an enactment would be impermissible legislative exercise. This Court has further held that transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the rule of law and of Article 14 of the Constitution of India.

115. Though it is the contention of the learned Solicitor General that the judgment of this Court in Common Cause (2021) was rendered on the basis of the FR existing then, which now stand altered and the very foundation of the judgment is taken away, we are unable to accept the said contention. On the contrary, as could be seen from the judgment in Common Cause (2021), this Court found that there was no proscription on the Government to appoint a Director of Enforcement beyond a period of two years. This Court, in fact, observed that the Government has a power to appoint a person as Director of Enforcement for a period of more than two years. This Court found that Section 25 of the CVC Act cannot be said to be inconsistent with Section 21 of the General Clauses Act. It is not, as if, that this Court has held that the Government had no power to make an appointment beyond the period of two years. By the impugned Amendments, the position is clarified, the challenge to which, we have found to be unsustainable. As such, the contention that the very foundation on which judgment of this Court in the case of Common Cause (2021) was based is taken away is without substance.

116. As already discussed herein above, this Court has specifically issued a mandamus that no further extension shall be granted to the second respondent. The Union of India and the respondent No.2 were both parties in the proceedings before this Court in Writ Petition (Civil) No. 1374 of 2020 [Common Cause (2021)]. The mandamus issued to be parties was binding on them. We, therefore, find that the respondent No.1 could not have issued orders dated 17th November 2021 and 17th November 2022 in breach of the mandamus issued by this Court vide its judgment dated 8th September 2021 in Common Cause (2021).

117. Insofar as the reliance placed by Shri Raju on the judgment of this Court in the case of M/s Kishan Lal Lakhmi Chand and others (supra) is concerned, the said judgment would be of no assistance to the case of the respondents. It would be relevant to refer to the following observations of this Court:

> "8. ……However, to a query put by the Court to Shri Salve as to how Section 11 of the Act could be upheld validating retrospectively by retaining the fund collected under Act 12 of 1983 with the State Government, he stated in fairness that Section 11 was enacted only to defuse the effect of the writ of mandamus issued by this Court in Om Prakash case [(1986) 1 SCC 722] to refund the fee collected therein to the appellants therein, but under its guise the State did not intend to nor would it intend to retain the said fund collected under the predecessor Act 12 of 1983 from September 30, 1983, the date on which the notification under Section 5(1) of that Act was published in the State Gazette and the entire fund would be passed on to the credit of the Board under the Act. In that view Section 11 also is valid."

118. As such, it could thus clearly be seen that counsel for the State Government in fairness stated that Section 11 was enacted only to defuse the effect of the writ of mandamus issued by this Court in the case of Om Prakash Agarwal v. Giri Raj Kishori*[(1986) 1 SCC 722]* to refund the fee collected therein to the appellants therein. However, a statement was made that under its guise the State did not intend to nor would it intend to retain the said fund collected under the Act, which was held invalid and the entire fund would be passed on to the credit of the Board under the Act. As such, on the basis of the concession made by the learned counsel that the State did not intend to retain the fund collected and the entire fund would be passed on to the credit of the Board, this Court did not interfere with Section 11, which was intended to defuse the writ of mandamus. As such, the said judgment cannot be said to be an authority to hold that by a legislative enactment, a writ of mandamus issued by this Court could be defused.

119. Though we have held that orders dated 17th November 2021 and 17th November 2022 granting extensions to respondent No.2 are not valid in law, we are inclined to take into consideration the concern expressed by the Union of India with regard to FATF review. We are further inclined to take into consideration that the process of appointing the Director of Enforcement is likely to take some time. In that view of the matter, we find that in order to ensure the transition to be smooth in the larger public interest, it will be appropriate to permit respondent No.2 to continue to be in office till 31st of July 2023.

120. Before we part with the judgment, we place on record our deep appreciation for the assistance rendered by the learned Amicus Curiae Shri K.V. Viswanathan (as His Lordship then was), Shri Tushar Mehta, learned Solicitor General, Shri S.V. Raju, learned Additional Solicitor General, Mr. Anoop G. Choudhary, Mr. Gopal Sankarnarayanan, Dr. Abhishek Manu Singhvi, learned Senior Counsel, and Mr. Prashan Bhushan, Mr. J.S. Sinha, Mr. Sharangowda, and Ms. Vanshaja Shukla, learned counsel. We also place on record our appreciation for the valuable assistance rendered by Mr. Ravi Raghunath, learned Advocate-on-Record, who ably assisted the learned Amicus Curiae.

121. In the result, we pass the following order:

> (i) The challenge to Central Vigilance Commission (Amendment) Act, 2021 and the Delhi Special Police Establishment (Amendment) Act, 2021 as well as to the Fundamental (Amendment) Rules, 2021 is rejected and the writ petitions are dismissed to that extent.
>
> (ii) The impugned orders dated 17th November 2021 and 17th November 2022 granting extensions to the tenure of the respondent No.2- Sanjay Kumar Mishra for a period of one year each are held to be illegal. The writ petitions are partly allowed to that extent.
>
> (iii) However, the respondent No.2- Sanjay Kumar Mishra is permitted to continue to hold office till 31st July, 2023.

122. All the writ petitions as well as Miscellaneous Application including all pending applications, if any, shall stand disposed of in the above terms. No order as to costs.
