

Ms. Baba Beti vs State Of U.P. And 3 Others on 19 March, 2024

Author: Vivek Kumar Birla

Bench: Vivek Kumar Birla

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2024:AHC:48697-DB

AFR

Reserved on : 19.12.2023

Delivered on : 19.3.2024

In Chamber

Case :- CRIMINAL MISC. WRIT PETITION No. - 9949 of 2021

Petitioner :- Ms. Baba Beti

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Udai Chandani,Vivek Srivastava

Counsel for Respondent :- G.A.,R.P.S. Chauhan,Satish Chaturvedi

Hon'ble Vivek Kumar Birla,J.

Hon'ble Vinod Diwakar,J.

(Delivered by Hon'ble Vinod Diwakar, J.)

1. Heard Shri Gyanendra Kumar Mishra, holding brief of Shri Vivek Srivastava, learned counsel for the petitioner through Video Conferencing, Shri R.P.S. Chauhan, learned counsel for the Union of India, Shri Kuldeep Srivastava, learned counsel for the Enforcement Directorate, Shri Satish Chaturvedi, learned counsel for the State Bank of India, Shri M.C. Chaturvedi, learned Additional Advocate General assisted by Shri G.P. Singh, learned A.G.A. for the State-respondents, Shri Gyan Prakash, learned Senior Counsel assisted by Shri Sanjay Kumar Yadav, learned counsel for the CBI, Shri G.S. Chaturvedi, learned Senior Counsel assisted by Shri Aditya Gupta, learned counsel for SKS Ispat and Power Ltd., and perused the record.

2. Initially, the petitioner approached this Court seeking a fair investigation in the impugned FIR¹. However, through an amended application, the prayer was modified to request the transfer of the investigation to the CBI. For clarity, the amended prayer is reproduced herein after:

"Issue a suitable writ, order or direction in the nature of mandamus transferring the investigation to the Central Bureau of Investigation relating to First Information Report No.0115 of 2021 dated 26.9.2021, u/s 120B, 420, 467, 468, 471, 474, 476, 506, 507, 511 IPC, P.S. Zafrabad, District Jaunpur."

3. The petitioner, a teacher and social worker, became aware of corporate fraud allegedly committed by SKS Power Generation Limited (hereinafter referred to as "SKSPGL") and its holding companies through a newspaper publication. The incident unfolded on March 17, 2021, when she visited the State Bank of India in Jaunpur to inquire about certain transactions involving the accused, Anil Gupta. There, she was asked to submit specific papers related to the reports upon which she was basing her claims of serious corporate fraud. Shortly afterward, unidentified individuals forcibly entered her residence and warned her against pursuing the case, threatening dire consequences. Subsequently, individuals in police uniform, purportedly from Chhattisgarh, Madhya Pradesh, Maharashtra, and Uttar Pradesh, visited her home, pressurizing her to withdraw the complaint dated August 13, 2021, pending before the court of the learned Chief Judicial Magistrate in District Jaunpur, Uttar Pradesh.

4. On the direction of Chief Judicial Magistrate, Jaunpur, the FIR¹ was registered, and the investigation was entrusted to Economic Offences Wing, Varanasi Division, after approval from the Home Department. Following the investigation the police filed the closure report, primarily citing two reasons; firstly, the petitioner was not found available at the provided address, and secondly, the alleged incident of assault mentioned in the complaint was not substantiated.

5. While the investigation was ongoing, the petitioner filed the present petition seeking a fair investigation. Subsequently, through an amended writ petition, the petitioner requested the transfer of the investigation to the Central Bureau of Investigation (hereinafter referred to as CBI) for a thorough and impartial investigation. This prayer was made on various grounds, inter-alia:

5.1 M/s SKSPGL operates in the electricity generation and distribution sector within the State of Chhattisgarh. The company has established a coal-based thermal power plant situated in Villages Binjkote & Durramuda, Raigarh District, Chhattisgarh.

Additionally, in 2008, the company was allotted two coal blocks for the construction of a proposed third plant.

5.2 Between the financial years 2010-11 and September 2017-18, SKSPGL obtained a loan amounting to Rs.6170 crore from a consortium of banks, including the State Bank of India, L&T Infrastructure Finance Limited, PTC India Finance Limited, and State Bank of Bikaner and Jaipur. Specifically, State Bank of India granted Rs.5170 crore, L&T Infrastructure Finance Limited granted Rs.500 crore, PTC India Finance Limited granted Rs.400 crore, and State Bank of Bikaner and Jaipur granted Rs.100 crore.

5.3 Subsequent to acquiring the loan for the construction and development of the third project, SKSPGL allegedly engaged in misappropriating the loan funds through systematic corporate fraud. This misappropriation involved various methods, including transferring a significant portion of the loan amount to British Virgin Islands and British Overseas Territories of Bermuda through fictitious companies. These funds were then allegedly used to purchase SKSPGL's assets in collaboration with bank officials, violating RBI guidelines through group holding companies registered in aforementioned off - shore locations. Additionally, some loan funds were purportedly utilized in the stock market and the issuance of fraudulent Compulsorily Convertible Debentures (CCDs) for unlawful gains. As a result of these activities, SKSPGL, in conspiracy with 46 fictitious companies and public fund institutions, is claimed to have caused substantial losses to the government totalling Rs.5000 crore.

5.4 Furthermore, SKSPGL purposefully initiated significant losses deliberately and stopped repayments to its lenders. Consequently, the lead banker, SBI, seized the company's assets and conducted a bidding process for their sale. Agritrade Resources Limited emerged as the successful bidder, agreeing to acquire ownership of SKSPGL through its subsidiary, Entwickeln India Energy Private Limited, and assume the entire loan debt of Rs.5717 crore for a nominal sum plus an additional cash margin. It's noteworthy that Entwickeln India Energy Pvt. Ltd.'s holding company, Agritrade Power Venture Pvt. Ltd., and its subsequent holding company, Fair Thermal Power Ltd., are incorporated in British Virgin Islands (Tax heaven), with Agritrade Resources Ltd. being incorporated in Hamilton, Bermuda, and listed on the Singapore Stock Exchange.

5.5 Entwickeln India Energy Private Limited acquired all shares from SBI Trust at a significantly reduced price, with the bank allegedly waiving the interest rate on the loan and even reversing the entire interest amount of Rs.820 crore, considering it as deemed capital contribution from the holding company. Consequently, SKSPGL became the holding company of Entwickeln India Energy Private Limited, allegedly resulting in an illicit loss to the bank amounting to Rs.5717 crore.

5.6 Moreover, 46 fictitious companies were purportedly incorporated at the behest of SKS Group Entities' directors, engaging in round-tripping funds through bogus share transactions, further resulting in a huge profit in thousand of crores for SKSPGL group companies.

5.7 SKSPGL and its affiliated companies, including Berrio Mauritius, allegedly acquired 1,370,000 Compulsorily Convertible Debentures ("CCDs") from Entwickeln India Energy Pvt. Ltd. at a significantly undervalued price, resulting in an unlawful gain of Rs.589 crore. Additionally, SKS group companies purportedly made an investment through Asia Power FDI Ltd., a Mauritius-based company, into SKS group company, Labheshwari Agencies Limited, at a substantially reduced rate, ultimately leading to the unauthorized misappropriation of public funds amounting to Rs.524 crore.

5.8 Furthermore, certain entities, such as Shree Krishan, Citywings, Compact Agencies, and Labheshwari Agencies Ltd., allegedly engaged in high-value fraudulent share transactions, earning an illicit amount of Rs.400 crore without any genuine production.

5.9 SKSPGL reportedly granted interest-free unsecured advances totalling Rs.173 crore to nine companies, which were later reduced to Rs.50 crores in 2020. However, no substantial evidence of receipt against these advances was recorded.

5.10 Mahabir Gupta and Premlata Gupta, upon assuming directorship of Labheshwari Agencies Ltd. (hereinafter referred to as 'LAL'), purportedly took over investments made by Asia Power FDI Ltd. into SKSPGL at significantly reduced rates. This included the acquisition of 14,18,51,264 equity shares of Rs.10 each, 1,370,000 CCDs of Rs.1000 each, and 29,646 NCDs of Rs.10,000 each.

5.11 Additionally, Entwickeln India Energy Pvt. Ltd., a subsidiary of Agritrade Resources Ltd., allegedly paid Rs.400 crore, alongside SKS Ispat and Power Ltd., both registered at the same address. Subsequently, Entwickeln India Energy Pvt. Ltd. purportedly merged into SKS Ispat and Power Ltd. in 2019, indicating unauthorized actions even after investment by Agritrade Power Venture Pvt Ltd., resulting in SKS Ispat and Power Ltd. becoming the holding company of SKSPGL. Both SKSPGL and SKS Ispat and Power Ltd. are registered at 501-B, Elegant Business Park, Kurla Road, J.B. Nagar, Andheri East, Mumbai- 400059.

5.12 Moreover, the lead banker, SBI, through SBI Trusteeship, conducted a bid process for the auction of SKSPGL's assets, with Agritrade Resources Ltd. being selected as the successful bidder. Lenders agreed that Agritrade Power Venture Ltd. would implement the Resolution Plan through Entwickeln India Energy Private Limited by acquiring 100% equity shares of the company for Rs.300 crore and assuming the existing fund-based debt of Rs.57,34,87,84,874 for Rs.1720 crore. Out

of this amount, Rs.1600 crore was borrowed by Agritrade Power Venture Ltd. from Bank of Baroda.

5.13 Additionally, the State Bank of India (SBI) purportedly under- write the complete debt of Rs.5170 crore for the project in December 2011, without conducting proper valuation or due diligence as per RBI guidelines.

5.14 Furthermore, all companies incorporated in British Virgin Islands, British Overseas Territories of Bermuda, Singapore, and Mauritius are allegedly operated, directly or indirectly, by owners/directors of SKS group companies. Additionally, SKS Ispat and Power Limited, River View Securities Pvt. Ltd., Ranbhumi Securities Pvt. Ltd., Evernew Securities Pvt. Ltd., ACACIA Suppliers Pvt. Ltd., Labheshwari Agencies Ltd., Shree Krishna Structures Ltd., Citywings Agencies Pvt. Ltd., North West Coal Co. Ltd., Sugouri Distributors Pvt. Ltd., Gabaria Dealers Pvt. Ltd., Ambition Commosales Pvt. Ltd. and Compact Agencies Pvt. Ltd. besides other sham companies.

6. The present petition was initially listed on 2.12.2021, following which learned counsel for CBI, SBI, ED, and the State Government filed their respective counter affidavits in response to the Court's order, which were duly taken on record. The operative part of the order dated 2.12.2021 is extracted herein below:

".....We further direct that even if needful is not done by the petitioner or she does not appear, in view of the allegations in the FIR, the respondent no. 2, Director General of Police, Lucknow, Uttar Pradesh shall look into the matter and pass appropriate orders in the national interest.

Respondent no. 1, State of Uttar Pradesh Through Principal Secretary (Home) Govt. of Uttar Pradesh is also directed to look into all such aspects in the light of the allegations levelled in the first information report as well as in the present petition.

On the next date, learned A.G.A. apart from report/ decision of the Director General of Police, Lucknow, Uttar Pradesh, he shall also place on record the instructions from the respondent no. 1, State of Uttar Pradesh Through Principal Secretary (Home) Govt. of Uttar Pradesh.

In view of the allegations levelled in the FIR and the magnitude of the fraud in terms of money, this would certainly a case where national interest would be involved. Therefore, at this stage, without directing for impleadment of Union of India or the concerned Ministries which may include Home as well as Finance, we direct the learned counsel for the petitioner to serve a copy of the petition to learned Additional Solicitor General of India for sending the same to the concerned authority/ Ministry through appropriate Secretary/ Authority for taking note of the same and file instructions of such authority on the next date fixed. The concerned Ministry/

Authority shall be at liberty to seek impleadment in the petition or they may direct their impleadment if thought appropriate.

Put up this case as fresh on 17.01.2022."

(emphasis supplied)

7. Learned counsel for the petitioner states inter alia; (i) the entire investigation by the EOW Varanasi has been conducted in casual manner and nothing significant was investigated by the police, (ii) the police did not investigate the allegations made in the complaint rather was conducted investigation about the conduct and place of residence of the complainant, which has nothing to do with the offence committed by the accused company, (iii) there are serious allegations against the transfer of the fund through sham companies abroad and thereafter, writing off the loan amount to the tune of Rs.2446 crore by the SBI officials in connivance with the accused persons, (iv) the KYC of the Agritrade Power Venture Ltd. has not been verified, (v) the nature of business, the amount involved, the loss to the national treasury has been eye-washed by the Investigating Officer, (vi) it is beyond the capacity and expertise of State police to investigate the alleged offence, and expertise required for the investigation are insufficient, (vii) it is the duty of the court to ensure effective and unbiased investigation for conducting fair trial, (viii) deficiency in investigation is visible on the part of the U.P. Police, it is apparently reflected that it's an eye washed investigation to benefit the accused persons, if the investigation is not transferred to the CBI, it would be a miscarriage of justice to the State, because of the reason that the police hurriedly botched up investigation and filed the closure report for the reasons best known to them, (ix) likewise, by adopting the similar modus operandi through various sham companies besides sending huge amount to the off shore holding companies of SKSPGL, the accused persons have caused a loss of Rs.5000 crore in connivance with the bank officials, and other unknown accused. There are serious allegations against the bank officials which is apparently reflected from the facts outlined in preceding paragraphs.

8. Shri Satish Chaturvedi, learned counsel for the State Bank of India has filed counter affidavit stating inter-alia: (i) that the petition is not maintainable as the petitioner could seek an equally efficacious remedy before the Magistrate by filling an appropriate application, and the writ petition is not maintainable and is liable to be dismissed on this sole ground alone and has relied upon Satya Prakash v. State of U.P. in Criminal Misc. Writ Petition No.23 of 2022, which states that the power of Magistrate to monitor the investigation in exercise of his power under section 156(3) Cr.P.C. has been recognized in series of decisions by the Supreme Court, therefore, the Court of Magistrate is the competent Court to look into the grievances of the petitioner, (ii) the petitioner has also filed a similar writ petition before the Lucknow Bench of this Court bearing Misc. Bench No.21453 of 2021 and the fate of that petition is not known to the respondent, besides the petitioner has also filed similar petition before the High Court of Orissa at Cuttack bearing CRLMP No.2069 of 2021, (iii) no transaction done by the bank officers within the territorial jurisdiction of this Court, therefore, this Court does not have any territorial jurisdiction to decide the fate of the instant petition.

9. In addition to the preliminary objections, the SBI has also addressed the allegations on their merits, which are summarized as follows: (i) the SKS Power Generation (Chhattisgarh) Limited (in

short SKSPGL), which is engaged in the business of generation and distribution of electricity intending to set up a coal based Thermal Power Plant located at Binjkote and Durramunda in District-Raigarh, State of Chhattisgarh approached State Bank of India, PFSBU, Mumbai Branch for availing the financial assistance for setting up a thermal power project at Village - Durramud, Binjkot, Tehsil - Kharsia District- Raigarh at Chhattisgarh. The SKSPGL was promoted by SKS Ispat & Power Ltd. (SKSIPL), (ii) the State Bank of India, PFSBU, Mumbai Branch sanctioned the Term Loan of Rs.5170 crore, thus, the credit facilities was enjoyed by the captioned unit from the State Bank of India PFSBU, Mumbai Branch, however, the Loan Agreement dated 19.12.2011 was executed at Raipur, Chhattisgarh, (iii) SKSPGL availed various credit facilities from other financial institutions, including Rs.500 crore from L&T, Rs.400 crore from PTC India Ltd, and Rs.100 crore from State Bank of Bikaner & Jaipur, (iv) the company failed to repay the dues in time and thus failed to maintain the financial discipline of the bank resulting the account was transferred to Stressed Assets Management Branch, Bhopal, (v) to resolve the stress in the Company a resolution plan was approved involving Change of Management in accordance with the applicable laws including RBI's Circular dated 12.2.2018 on Resolution of Stressed Assets Revised Framework and the same was acted upon by the SBI Corporate Centre, Mumbai, (vi) on 16.8.2018 the proposal for change in management based on the offer of Agritrade Resources Ltd. for acquiring 100% of equity in SKSPGL, was approved by Bank's Executive Credit Central Board (in short ECCB) and final Letter of Intent was issued to ARL on 11.10.2018, documentation for the transactions were executed on 12.11.2018 and the same was done at SBI Corporate Centre, Mumbai, (vii) in accordance with the approval, on 5.6.2018, the SKSPGL was put to auction and Final Letter of Intent was issued in favour of M/S Agritrade Resources Limited (ARL), a company listed on Hong Kong Stock Exchange, won the bid for acquiring management control of SKSPGL, and on 18.3.2019, the investor-Agritrade Resources Ltd. (ARL) remitted an amount of Rs.1,721 crore (approx.) to the account maintained at Bhopal Branch and remaining outstanding of Term Loan Rs.2,446 crore (approx.) was written-off. Thus, the all the accounts maintained at SAM branch, Bhopal were closed on 18.3.2019, (viii) all the consortium members comprising PTC Financial Services, L&T Infrastructure Finance, and State Bank of Bikaner & Jaipur merged with State Bank of India on 1.4.2017 which were of the view that the Forensic Audit report circulated by the Auditors, have addressed the consortium observations and there were no adverse remarks and in the meeting dated 19.12.2019 and the Consortium agreed to close the Forensic Audit Report.

10. On the other hand, S.P. Legal Cell, Headquarter, Lucknow has filed counter affidavit on 25.1.2022, stating inter-alia, (i) the State Government accorded approval and consequent upon the investigation was transferred to the Economic Offences Wing, Lucknow with a direction to conclude the investigation within three months, (ii) in compliance of this Court's order dated 2.12.2021, the petitioner appeared before the DGP, Uttar Pradesh along with his Advocate Shri Udai Chandani on 8.12.2021 and apprised the DGP, Lucknow about her grievances and apprehensions, and in response to the meeting, the DGP Uttar Pradesh asked the S.P. Sultanpur to provide security to the petitioner, (iii) the petitioner stated in her representation dated 8.1.2022 that she is residing at Shivcity, Jarhara, New Indira Nagar, Lucknow, but she could not be found on the addressed mentioned in her application dated 8.1.2022, however, Commissioner of Police, Lucknow directed to provide security to the petitioner, (iv) on perusal of letter dated 23.12.2021 annexed with the counter affidavit, it transpires that the S.P. posted at the office of DGP Uttar Pradesh sought

approval from the Secretary (Home) for entrusting the investigation to the EOW, and vide letter dated 11.1.2022, the Joint Secretary (Home), Government of Uttar Pradesh accorded approval to conduct the investigation from EOW, Varanasi Division.

11. Learned Additional Advocate General submits that (i) the EOW, CID, Varanasi on completion of the investigation, in the instant case, filed the Closure Report No.8/2022 dated 20.12.2022 on 25.1.2023 before the Court of Chief Judicial Magistrate, Jaunpur and the matter is pending consideration before the Court, (ii) the identity of the petitioner could not be established, and no person in the name of petitioner was found at the given address, (iii) the petitioner was also not found at the address of New Indira Nagar, Lucknow, (iv) the statement of the then Branch Manager, Cashier and other staff besides Security Guard posted at SBI Branch Jaunpur were recorded, none of them supported the contentions raised by the petitioner in the petition, (v) the allegations against the unknown persons who have allegedly threatened the petitioner, was also found to be incorrect, (vi) the statement of co-villagers and local Councillor were recorded and no truth was found with respect to the allegations made in the petition, (vii) the statement of suspect Deepak Gupta, Anil Mahaveer Gupta, Aneesh Gupta, Mahaveer Prasad Gupta, Smt. Premlata Gupta, Gopal Garg, and Rohit Prashar, AGM SBI Bhopal were recorded, balance sheet of the company was scrutinized, loan settlement agreement was looked into, but no illegality was observed during the investigation, (viii) Closure Report dated 20.12.2022 was approved and accepted by the Confidential Section-8 of the Home Department, Lucknow vide letter No.591/25-8-2022-25-8099/387/2021 dated 13.7.2022.

12. Even though, the Union of India was not arrayed as party in the writ petition, but keeping in view the magnitude of fraud and the complexity involved in the case, this Court vide order dated 2.12.2021, directed the learned Additional Solicitor General to take instructions from the Ministry of Home and Ministry of Finance, Government of India. In response to the direction of this Court, the Department of Enforcement Directorate filed a separate affidavit through Central Government Counsel. On perusal of the affidavits dated 5.4.2022 and 15.12.2023, it transpires that (i) vide letter dated 4.4.2022, the Under Secretary, Ministry of Finance requested the Director, Enforcement Directorate to file counter affidavit in the instant writ petition, (ii) after conducting preliminary inquiry, an ECIR bearing No.ECIR/ALSZO/01/2022 dated 10.2.2022 is registered at Allahabad Sub Zonal Office of Directorate of Enforcement with the approval of competent authority, (iii) the Chennai Zonal Office of Directorate is already conducting investigation after recording ECIR dated 7.8.2019 against M/s Cethar Ltd. and the said ECIR was registered on the basis of FIR No.20/2018 dated 16.10.2018 by CBI, BSF Cell Bangueluru against Cethar Ltd. and property worth Rs.9.08 crore was attached in 2022, which was subsequently confirmed by the adjudicating authority, PMLA, (iv) another Attachment Order of Rs.517.81 crore were also attached vide PAO Order No.3/2023 dated 27.6.2023 and certain properties of SKS Ispat and Power Ltd. are also attached since part of the proceeds of the crime committed by M/s Cethar Ltd.

13. Shri G.S. Chaturvedi, learned Senior Counsel appeared for the SKSPGL and submits that; (i) no such case for transfer the investigation to the CBI is made out as the investigation has already been concluded and closure report has been filed, (ii) it is always open for the complainant to file a protest petition before the court concerned and could raise her grievances there, (iii) the alleged accused is effected party, they may also be allowed to file counter affidavit in response to the

allegations made in the instant petition, (iv) the complainant is contesting a proxy litigation at the behest of undesirable element, and therefore, has vested interest, (v) such litigants ordinarily should not be allowed to misuse the process of law to settle personal scores, (vi) no fruitful purpose would be achieved by transferring the investigation to the CBI.

14. Before delving into the merits of the case, it is prudent to discuss the law regarding the transfer of investigations to the Central Bureau of Investigation (CBI). In criminal jurisprudence, there is no universally applicable rule that can be rigidly applied to all similar facts and circumstances. Instead, various factors such as the modus operandi (intention) of the accused, the gravity of the offense, the manner in which the offense was committed, its societal impact, and the severity of potential punishment must be considered. Additionally, the possibility of the investigation being compromised by factors such as implicit biases, preconceived notions, personal interests, undue influence, selective evidence gathering, favoritism, or prejudiced treatment of suspects are pertinent considerations for Constitutional Courts when contemplating the transfer of investigations. Moreover, investigations may also be vulnerable to influence from individuals with political connections and significant financial resources. Equally, the decision to transfer an investigation to the CBI cannot be made routinely or solely based on the request of a party alleging wrongdoing. It requires careful examination and evaluation of the circumstances surrounding the case to ensure fairness, impartiality, and the preservation of justice.

15. The Supreme Court in *State of Punjab v. CBI*² has thus opined:

"the inherent power of the High Court under Article 226 of the Constitution to direct investigation by CBI for securing the ends of the justice must be exercised sparingly, cautiously, and in exceptional situations, where it becomes necessary to provide credibility and confidence in investigation, or where the incident may have national or international ramifications or where such an order may be necessary for doing the complete justice and enforcing fundamental rights."

16. The 5-judges bench of the Supreme Court in the celebrated judgment of *State of West Bengal and others v. Committee for the Protection of Democratic Rights, West Bengal and others*³ has observed that while passing orders under Article 226 of the Constitution, the Constitutional Courts must bear in mind certain self-imposed restrictions on exercise of these powers and thus summarized as under:

"we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This

extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

17. In *Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya*⁴ the Supreme Court observed that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency. Again Supreme Court in *Air India Stationery Corpn. v. United Labour Union*⁵, held that the founding fathers placed no limitation or fetters under Article 226 of the Constitution except self-imposed limitations, and observed that the arm of the Court is long enough to reach in justice, whenever it is found.

18. Further, in *KV Rajendran* case⁶, the Supreme Court observed that it is a settled proposition that the transfer of investigation should only be done in rare and extra ordinary circumstances in order to ensure total justice between the parties and to instil public confidence.

19. The fair investigation in criminal law is essential for upholding rule of law, the principles of justice, protecting individual rights, and maintaining the integrity of the legal system. By adhering to the principles of impartiality, due process, transparency, and commitment to such truth, investigating agencies ensure that criminal investigation are conducted fairly and effectively.

20. The Supreme Court in *Himanshu Kumar and others v. State of Chhattisgarh and others*⁷, has held:

44. It is now settled law that if a citizen, who is a de facto complainant in a criminal case alleging commission of cognizable offence affecting violation of his legal or fundamental rights against high Government officials or influential persons, prays before a Court for a direction of investigation of the said alleged offence by the CBI, such prayer should not be granted on mere asking. A Constitution Bench of this Court, in the case of the *State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal*, reported in (2010) 3 SCC 571, has made the following observations pointing out the situations where the prayer for investigation by the CBI should be allowed:

"70.... In so far as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such powers should be exercised, but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This

extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

(emphasis supplied)

45. In the above decision, it was also pointed out that the same court in *Secretary, Minor Irrigation & Rural Engineering Services, U.P. v. Sahngoo Ram Arya*, (2002) 5 SCC 521, had said that an order directing an enquiry by the CBI should be passed only when the High Court, after considering the material on record, comes to the conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency.

46. In an appropriate case when the Court feels that the investigation by the police authorities is not in a proper direction, and in order to do complete justice in the case and if high police officials are involved in the alleged crime, the Court may be justified in such circumstances to handover the investigation to an independent agency like the CBI. By now it is well-settled that even after the filing of the charge sheet the court is empowered in an appropriate case to handover the investigation to an independent agency like the CBI.

47. The extraordinary power of the Constitutional Courts under Articles 32 and 226 respectively of the Constitution of India qua the issuance of directions to the CBI to conduct investigation must be exercised with great caution as underlined by this Court in the case of *Committee for Protection of Democratic Rights, West Bengal* (supra) as adverted to herein above, observing that although no inflexible guidelines can be laid down in this regard, yet it was highlighted that such an order cannot be passed as a matter of routine or merely because the parties have levelled some allegations against the local police and can be invoked in exceptional situations where it becomes necessary to provide credibility and instil confidence in the investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights. We are conscious of the fact that though a satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or re-investigation, submission of the charge sheet ipso facto or the pendency of the trial can, by no means, be a prohibitive impediment. The contextual facts and the attendant circumstances have to be singularly evaluated and analyzed to decide the needfulness of further investigation or re-investigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the court of law should be to secure justice on the basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency.

48. The above principle has been reiterated in *K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai*, (2013) 12 SCC 480. Dr. B.S. Chauhan, J. speaking for a three-Judge Bench of this Court held:

"13. ...This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. ..."

49. Elaborating on this principle, this Court further observed:

"17. ... the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased."

50. The Court reiterated that an investigation may be transferred to the CBI only in "rare and exceptional cases". One factor that courts may consider is that such transfer is "imperative" to retain "public confidence in the impartial working of the State agencies." This observation must be read with the observations made by the Constitution Bench in the case of *Committee for Protection of Democratic Rights, West Bengal* (supra), that mere allegations against the police do not constitute a sufficient basis to transfer the investigation.

51. In *Romila Thapar v. Union of India*, (2018) 10 SCC 753, one of us, A.M. Khanwilkar, J., speaking for a three-Judge Bench of this Court (Dr. D.Y. Chandrachud, J. dissenting) noted the dictum in a line of precedents laying down the principle that the accused "does not have a say in the matter of appointment of investigating agency". In reiterating this principle, this Court relied upon its earlier decisions in *Narmada Bai v. State of Gujarat*, (2011) 5 SCC 79, *Sanjiv Rajendra Bhatt v. Union of India*, (2016) 1 SCC 1. *E. Sivakumar v. Union of India*, (2018) 7 SCC 365, and *Divine Retreat Centre v. State of Kerala*, (2008) 3 SCC 542. This Court observed:

"30...the consistent view of this Court is that the accused cannot ask for changing the investigating agency or to do investigation in a particular manner including for court-monitored investigation."

52. It has been held by this Court in *CBI v. Rajesh Gandhi*, 1997 Cri LJ 63, that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.

53. The principle of law that emerges from the precedents of this Court is that the power to transfer an investigation must be used "sparingly" and only "in exceptional circumstances". In assessing the plea urged by the petitioner that the investigation must be transferred to the CBI, we are guided by the parameters laid down by this Court for the exercise of that extraordinary power.

21. In cases of financial fraud, fair investigations are essential not only to safeguard financial institutions but also the nation's interest. Furthermore, fair investigations serve to uncover the truth behind complex financial transactions. Corporate fraud often involves intricate schemes, misleading accounting practices, and hidden agendas. A meticulous and unbiased investigation is necessary to untangle the web of deceit and reveal the extent of the crime. This not only facilitates the prosecution of the perpetrators but also helps prevent similar fraudulent activities in the future by exposing vulnerabilities within regulatory frameworks and corporate governance structures.

22. In the preceding paragraphs, the magnitude and gravity of the offenses have been discussed in two aspects: firstly, serious allegations of systematic fraud committed by the accused company resulting in a loss of Rs. 5000 crore to the government treasury. These actions not only undermine the financial health of the country but also its security. Secondly, the manner in which the investigation was conducted by the Economic Offences Wing of the Government of Uttar Pradesh, and subsequently, after approval from the confidential section of the Home Department, the police filed a closure report. This investigation, characterized by its botched nature, suggests malfeasance.

23. After assessment of closure report dated 20.12.2022 filed on 25.1.2023 before the Court of Chief Judicial Magistrate, Jaunpur, several shocking revelations have emerged from the manner in which the investigation was conducted, which are highlighted hereafter; (i) needlessly, the petitioner's both place of residence, first, at Bhuwala Patti, P.S. Zafrabad, District Jaunpur, and second, at Jarhara, Shivcity, Indira Nagar, Lucknow was inquired for no purpose, ostensibly to divert the scope of investigation, (ii) in this regard, the statement of Shri Bharat Bhushan s/o Shri Subedar, Shri Ram Shringar s/o Shri Pancham, Shri Rakesh Patel, Shri Ved Prakash, Shri Kapil s/o Shri Shamsher Bahadur, Smt. Kirtiwalla w/o Dr. Tej Pratap, Shri Shailendra Kumar s/o Shri Kalpnath, Shri Lalji Patel s/o Shri Gajrat, Shri Hari Prasad, and Shri Sanjeev Bharti, the Councillor, Nagar Palika Parishad Jaunpur were recorded; all the aforesaid persons showed ignorance about the petitioner, (iii) petitioner's whereabouts were also inquired from local resident of Shivcity Jarhara New India Nagar, P.S. Indira Nagar, Lucknow, they also showed ignorance, (iv) on 27.3.2022, the police recorded statement of accused Deepak Gupta, accused Anil Mahaveer Gupta, accused Aneesh Gupta, accused Mahaveer Prasad Gupta, accused Smt. Premalata Gupta and accused Gopal Garg for the reason best known to the Investigating Officer, which again was beyond the scope of investigation in the wake of allegations made in FIR, (v) on 4.4.2022, the police recorded the statement of accused Rohit Parashar, AGM, Bhopal and accused Hari Singh Dilodia, GM SBI, Bhopal, (vi) on 27.4.2022, the statement of Shri S.K. Srivastava, Branch Manager, SBI Main Branch

Jaunpur along with 14 others- who were working with the Main Branch, Jaunpur at the relevant time. All the accused working at the branch also shown ignorance about the petitioner and denied happening of any such incident as alleged in the instant petition, (vii) besides statement of above stated persons, the I.O. has recorded the statement of Ct. Anoop Verma, Ct. Ajeet Kumar Kanojia, Ct. Manjeet Singh, L/Ct. Soni Singh Patel, Ct. Jitendra Kumar, S.I. Ramji Saini, HC Sanjay Kumar Yadav, HC Ajai Singh Yadav, Councillor Raj Kumar Verma of Indira Nagar Ward No.26, Lucknow, S.I. Ashish Pandey, (viii) and on 10.12.2022, recorded statement of Shri Subodh Kumar Srivastava, Chief Regional Manager, Varanasi. The averments made in the above referred statements have no connect to the allegations made in the FIR, which could justify the purpose and intent of the investigation. Apparently, the same was done to frustrate the investigation.

24. On examination of documents filed by the petitioner, counter affidavit by Directorate of Enforcement and State Bank of India, it's prima facie observed that; (i) the SKSPGL and its holding companies, in collusion with four private and public financial institutions, perpetrated a massive fraud against the government treasury. Initially, the corporate entity borrowed a substantial sum of public funds- Rs.6170 crore for installation of Thermal Power Project, which was subsequently siphoned off through a network of dummy/sham companies under false pretences. The substantial funds were illicitly transferred via illegal channels to British Virgin Islands and British Overseas Territories of Bermuda, camouflaged under the guise of another fraudulent off-shore company. Eventually, the companies associated with Anil Gupta and Family declared themselves as Non-Performing Assets (NPA). Astonishingly, premier banking institutions like the State Bank of India accepted the false claims without conducting any audits or verifications and settled for a mere fraction of the borrowed amount, mortgaging assets worth Rs.5000 crore for just Rs.1721 crore and remaining outstanding of Rs.2446 crore was written-off, (ii) shockingly, even the auction purchaser turned out to be the same British Virgin Islands company established by Anil Gupta & Family through proxies. Upon successfully acquiring the said company through the bid, the entire board of directors conveniently relinquished their positions, allowing Anil Gupta & Family to regain control of the company. This elaborate scheme orchestrated by the Gupta Brothers went unnoticed in the police investigation, (iii) on further scrutiny, it's revealed that M/s SKS Ispat and Power Ltd applied for coal blocks for their steel plants in Chhattisgarh and Jharkhand in 2008. Following the awarding of the coal blocks, SKSPGL secured loans amounting to Rs.6170 crore from a consortium of banks for the project's construction and development. Blackstone PE firm invested in SKSPGL shares, and subsequently, the EPC contract was awarded to Cethar Ltd., which is facing investigation by Enforcement Directorate and CBI at Bengaluru Office, (iv) however, discrepancies soon emerged in the financial dealings of the involved parties. Advance payments were made without proper invoicing, loans were shuffled between subsidiary companies, and bogus expenses were recorded to manipulate financial statements. Furthermore, no interest was charged on the loans, resulting in significant losses for the lending institutions. Despite these irregularities, mortgages were executed without proper documentation, and asset valuations were grossly undervalued, (v) moreover, the intricate web of companies involved in the transactions extended to tax havens like British Virgin Islands and British Overseas Territories of Bermuda. Companies were formed with minimal disclosure requirements, facilitating the transfer of funds without scrutiny. Agritrade Power Venture Pvt. Ltd., a holding company based in Singapore, subsequently acquired by SKSPGL. Suspicious transactions, including gross undervaluation of assets and transfers to personal accounts, emerged,

leading to complex entered entwined transactions.

25. The Investigating Officer concluded the investigation with the findings that SKSPGL is a thermal power generating company and the company has borrowed a loan of Rs.6170 crore from a consortium of banks led by SBI. On 9.12.2016, the company had total debt of Rs.5000 crore approximately and in accordance with the banking loss, the accused company was declared Non-Performing Assets. The proceedings of NPA was conducted by SBI Mumbai in accordance with RBI guidelines and the assets of the accused company was sold for Rs.2170 crore, and rest of the amount was written-off by the SBI bank. The I.O. has also examined the ITR Annual Report, balance sheet, ROC balance sheet, AOC-04 Form, MGT-07 Form and Form-23 SCA, and nothing incriminating was found during the investigation. The said conclusion is erroneously recorded because of the reason that none of the holding company- incorporated in India- of off-shore companies registered at British Virgin Islands and British Overseas Territories of Bermuda, was investigated by I.O., besides other sham and fictitious companies owned, operated- directly or indirectly- by the SKSPGL and its group companies.

26. Mr. Satish Chaturvedi, Counsel for the State Bank of India, has failed to provide any document/ order suggesting that this court lacks the authority and competence to issue orders when similar petitions are pending in other courts. On perusal of order dated 24.9.2021 passed in Misc. Bench No.21453 of 2021, it's observed that the matter was last listed on 24.9.2021, and thereafter, did not see the light of the day. Whereas, on perusal of the CRLMP No.2069 of 2021, it's again observed that no effective order was passed by the High Court of Orissa at Cuttack. Additionally, except by the SBI Bank, none of the other parties involved in the instant case object to the petition's maintainability on this ground, thus we reject the arguments put forth by the Bank.

27. It's judicious to take a reference from H.N. Rishbud v. State of Delhi⁸ case in which the Supreme Court thus held that the Criminal Procedure consists generally of the following steps for carrying out investigation; (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of- (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173.

28. In cases of corporate fraud involving the siphoning of large sums through offshore sham companies, deceptive share transactions, and the issuance of bogus Compulsorily Convertible Debentures, the involvement of specialized investigative agencies is warranted. Therefore, the aid and assistance of regulatory bodies such as the Securities and Exchange Board of India (SEBI), along with the office of the Serious Fraud Investigation Office established under the Ministry of Corporate Affairs, comprising experts in forensic auditing, banking, law, information technology, investigation, company law, capital markets, and taxation, are required for detecting and prosecuting white-collar crimes/fraud in the interest of justice.

29. Regrettably, the Investigating Officer failed to determine the correct approach to investigate in such facts of massive scale of the fraud and loss to the state exchequer. Instead, the IO wasted time in locating the complainant, whose information initiated the FIR¹, neglecting their duty to investigate the crime itself. It's settled law that after registration of the FIR, it becomes a state case, and in such cases where the allegation is against the state, the role of the complainant becomes insignificant. Otherwise, also, it is not a case that no man in the government department except the Investigating Officer was aware of the commission of the offence, it is evident from the records, that right from the top man in home department to the DGP, all were aware about the case. The petitioner's counsel appearing regularly in court, and there was a threat to the petitioner's life and property, resulting in the petitioner's unavailability at given addresses. Following the court's direction, the petitioner appeared before the Director General of Police, Uttar Pradesh, with counsel, expressing grievances, prompting the DGP's office to ensure the petitioner's safety through the Superintendent of Police, Jaunpur. Moreover, discussions at the government level in the Home Department at Lucknow, evidenced by correspondence between the Secretary (Home) and the SP posted at the DGP's office, reflects approval of investigation by the Economic Offences Wing. Frequent correspondence between the Inspector General of Police, EOW, Lucknow, and the Joint Secretary (Home) of the Uttar Pradesh Government, as well as the Commissioner of Lucknow, dated 15.12.2021, 23.12.2021, 11.1.2022, 28.12.2021, 7.1.2022, 8.1.2022, and 22.1.2022, forming part of the counter affidavit dated 25.1.2022 filed on behalf of the State Government further substantiates that entire proceeding of investigation were conducted under command and control of home department.

30. On perusal of the note prepared by Inspector Sunil Kumar Verma, EOW, Sector Varanasi, it's reflected that the closure report dated 20.12.2022 was communicated to the Home Department and the same was approved and accepted by the Under Secretary, Confidential Section-8, U.P. Government vide letter no.591/25-8-2022-25-8099/387/2021 dated 13.7.2022.

31. The contents of the aforesaid letter are self-explanatory. The Home Department overlooked the directions passed by this Court and approved the closure report in a perfunctory manner, which is rare and exceptional and filing of closure report under the signature of an Inspector is in violation of Rule 523 of the Uttar Pradesh Police Regulations besides breach of provisions of Criminal Procedure Code, 1973. The closure report prima facie gives two impressions: (i) the highest office of the police department and officers of the Home Department lacks basic understanding of criminal investigation, in which there are allegations of massive corporate fraud, like the allegations made in the instant case, (ii) intentionally, as it appears, both the departments embolded themselves with the fraudulent activities of SKSPGL and its group companies for ulterior motive, best known to them. It has far-reaching consequences and undermines the public trust in the government institutions and erodes the public faith in administration.

32. It is also evident that there was a lack of coordination between the U.P. Police, Enforcement Directorate, and CBI. It has come to light that the CBI has already registered an RC against a company with business relations to the accused company, namely, Cethar Ltd., at its Bengaluru office. Apparently, the Cathar Ltd. is a different case based on distinct fact as had business dealings with SKSPGL. Furthermore, based on the predicate offence, the Enforcement Directorate has also

registered an ECIR, which is currently under investigation. Surprisingly, the Uttar Pradesh police were unaware of these developments; intentionally or unintentionally- could not be ascertained at this stage, but definitely it undermines the working of police.

33. Additionally, the closure report was submitted by ignoring the directions issued by this Court vide order dated 2.12.2021, in the instant case, in which the learned Assistant Solicitor General was directed to file response from the office of Home and Finance Department, Government of India, through concerned Secretaries and as it was thus observed, "We further direct that even if needful is not done by the petitioner or she does not appear, in view of the allegations in the FIR, the respondent no. 2, Director General of Police, Lucknow, Uttar Pradesh shall look into the matter and pass appropriate orders in the national interest.

Respondent no. 1, State of Uttar Pradesh Through Principal Secretary (Home) Govt. of Uttar Pradesh is also directed to look into all such aspects in the light of the allegations levelled in the first information report as well as in the present petition.

.....in view of the allegations levelled in the FIR and the magnitude of the fraud in terms of money, this would certainly a case where national interest would be involved." The police chose to file the closure report without waiting response from the Government of India, and without considering the aforesaid directions.

34. It is evident from the counter affidavit filed by the Enforcement Directorate, Department of Revenue, Government of India that the Zonal Office at Prayagraj has already registered an ECIR bearing No.ECIR/ALSZO/01/2022 dated 10.2.2022 with the approval of the competent authority. Consequently, we leave to the wisdom of Enforcement Directorate's officers, to trace the proceeds of the crime and proceed further in accordance with the law, expeditiously.

35. We are of the opinion that the Economic Offences Wing (EOW), Varanasi Division, has conducted the investigation with a predetermined in collusion with the accused persons. Such actions have far-reaching implications for the integrity of the criminal justice system, public trust, and raise serious questions about the functioning of the police. Therefore, in the fitness of the facts discussed hereinabove, a reference is made to the Vinay Tyagi v. Irshad Ali⁹ case where the Supreme Court has set-fourth the parameters for reinvestigation/de novo investigation and thus held that an expression "fair and proper investigation" in criminal jurisprudence has a twin purpose: firstly, the investigation must be unbiased, honest, just and in accordance with law; secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such in investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency.

36. For the foregoing reasons, we direct that: (i) The Central Bureau of Investigation (CBI), New Delhi is directed to investigate a case against SKSPGL and its affiliated companies, which were involved in the illicit transfer of substantial funds to British Virgin Islands and British Overseas

Territories of Bermuda through illegal channels, disguised under the facade of fraudulent offshore entities, (ii) the CBI is further directed to investigate the complicity of bank officials who facilitated the approval of loans and subsequent auction proceedings in favor of Agritrade Power Venture Pvt. Ltd., (iii) the Chairman of the State Bank of India (SBI) and the Principal Secretary of the Home Department, Uttar Pradesh, are instructed to safely maintain the original records and make them available to the investigating agency upon request, (iv) the Director of the Serious Fraud Investigation Office (SFIO) in New Delhi is tasked with conducting forensic audits and other necessary investigations pertaining to SKSPGL and its associated companies, including Agritrade Resources Limited, Entwickeln India Energy Private Limited, Agritrade Power Venture Pvt. Ltd., Fair Thermal Power Ltd., Shree Krishan, Citywings, Compact Agencies and Labheshwari Agencies Ltd., Asia Power FDI Ltd., SKS Ispat and Power Ltd., and any other relevant entities, (v) the Chairman of the Securities and Exchange Board of India (SEBI) is directed to provide all necessary assistance to the investigating agency and take necessary action, if required within their jurisdiction, (vi) the Directors of the CBI, Enforcement Directorate, and SFIO in New Delhi are tasked with supervising the investigation process, (vii) the entire records of the FIR¹ and the subsequent proceedings shall be handed over to the Central Bureau of Investigation at New Delhi, and the Director SFIO, New Delhi within fifteen days of receiving the copy of this order for further action and compliance.

37. The observations made above are provisional and are intended solely to dispose of the instant petition. The same shall not be construed to influence the investigations being conducted by the Central Bureau of Investigation (CBI), the Enforcement Directorate (ED), and the Serious Fraud Investigation Office (SFIO). These investigative agencies are expected to conduct their investigations professionally, in accordance with the law and the standard operating procedures established over a period of time, in the best interests of the state and the institutions involved.

38. The Registrar (Compliance) is directed to transmit a certified copy of this order to; (i) Chief Secretary, U.P. Government, (ii) Director, CBI, New Delhi (iii) Director, Enforcement Directorate, New Delhi, (iv) Director, SFIO New Delhi, (v) Chairman, SEBI, Mumbai, and (vi) Chairman SBI, Mumbai, forthwith for necessary compliance.

39. Parting with the judgment of this case, it is the need of the hour to frame policy and guidelines to prevent miscarriage of justice occasioned because of defective investigation in cases of corporate fraud where the volume of amount is excessively high and has a bearing on the functioning of the State's institution besides financial implications, if not made so far.

40. Corporate fraud causes a significant threat to the integrity of financial institutions and government functioning. When police conduct botched investigations in such fraud cases like corporate fraud, ponzi schemes, security fraud, accounting fraud, large scale tax evasion, kickbacks, embezzlement of government funds, cyber fraud including ransomware attacks and data theft, the implications are profound and multifaceted.

41. To combat large-scale fraud effectively, concerted efforts are needed from governments, regulatory authorities, law enforcement agencies, and private sector. Enhance regulatory oversight,

stricter enforcement of laws and regulations, investment in Cyber Security Infrastructure at public awareness campaigns are essential components of a comprehensive anti fraud strategy.

42. The effective police training and regulatory reforms play pivotal roles in bolstering investigative capabilities and ensuing justice. The state government must invest in comprehensive training programmes tailored to address the complexities of financial crimes, including fraud, embezzlement, and money laundering. The training programme should encompass various aspects, including;

42.1 Financial Analysis: Officers need to understand financial documents, such as balance sheets, income statements, and cash flow statements, to identify irregularities indicative of fraudulent activities. Training in financial analysis equips investigators with the expertise to follow the money trail and uncover fraudulent schemes.

42.2 Forensic Accounting: Knowledge of forensic accounting techniques is essential for scrutinizing financial records, tracing transactions, and detecting discrepancies or falsifications. Training in forensic accounting enables investigators to gather admissible evidence that withstands legal scrutiny in court proceedings.

42.3 Legal Training: Familiarity with relevant laws, regulations, and legal precedents pertaining to corporate fraud is indispensable for conducting investigations and building prosecutable cases. Police training should provide officers with a comprehensive understanding of special statutes.

42.4 Technological Know-How: In the digital age, technology plays a crucial role in investigating corporate fraud. Training should cover the use of digital forensic tools, data analysis software, and electronic surveillance techniques to gather evidence from digital sources and electronic communications.

42.5 Collaborative Partnerships: Facilitating collaboration between law enforcement agencies, regulatory bodies, and industry stakeholders is essential for sharing information, coordinating investigations, and pooling resources. Establishing formalized partnerships enhances the effectiveness of efforts to combat corporate fraud.

42.6 Transparency and Accountability: Regulatory reform should promote transparency in corporate governance practices, requiring companies to disclose relevant financial information and adhere to ethical standards. Holding corporate executives and board members accountable for fraudulent activities reinforces the deterrent effect of regulatory measures, besides police and officers of the civil administration.

43. In essence, police training and regulatory reform are indispensable strategies for enhancing the investigative capabilities of law enforcement agencies in combating corporate fraud. By investing in comprehensive training programs for officers and enacting regulatory reforms that strengthen oversight, promote transparency, and encourage collaboration, state governments can effectively deter fraudulent behaviour and uphold the integrity of government institutions.

44. The State Government may develop a mechanism to make the best use and expertise of the Central Economic Intelligence Bureau, a nodal agency for economic intelligence mandated to ensure effective interaction and coordination among all the concerned agencies in the area of economic offence for effective investigation in cases highlighted in the preceding paragraphs. The Serious Fraud Investigation Office (SFIO), the Enforcement Directorate, and regulatory bodies like the Securities and Exchange Board of India (SEBI) may also be consulted in appropriate cases of financial crime, and suitable and adequate direction be issued in this regard by the Chief Secretary, Government of Uttar Pradesh, at the earliest.

45. With the aforesaid directions, the instant petition is allowed.

Order Date :- 19.3.2024 Anil K. Sharma (Vinod Diwakar, J.) (Vivek Kumar Birla, J.)