$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 24.01.2019**.**
Date of Decision :15.03.2019**.**

\+ CRL.M.C. 3137/2017

SHRI SANDEEP SILAS ..... Petitioner
Through: Mr. Arvind K. Nigam, Sr. Adv. with Mr. Manish Bishnoi, Mr.Mikhil Sharma, Mr.Mehtaab Singh Sandhu & Mr.Pratishth Kaushal, Advs.

Versus

CBI & ORS. ..... Respondents
Through: Mr.Nikhil Goel, Spl.P.P. with Mr.Gurpreet Hora, Adv. for CBI. Mr.Ravinder Agarwal, Adv. for CVC. Mr.V.S.R.Krishna, Adv. for Railways.

\+ CRL.M.C. 3141/2017

SH. MS. CHALIA ..... Petitioner
Through: Mr. Vikas Pahwa, Sr. Adv. with Mr. Manish Bishnoi, Mr. Karan Khanuja, Mr. Shadman Ahmed & Mr.Tushar Agarwal, Advs.

Versus

CBI & ORS. ..... Respondents
Through: Mr.Nikhil Goel, Spl.P.P. with Mr.Gurpreet Hora, Adv. for CBI. Mr.Ravinder Agarwal, Adv. for CVC. Mr.V.S.R.Krishna, Adv. for Railways.

\+ CRL.M.C.5094/2017

SH. MS CHALIA ..... Petitioner

Through: Mr. Vikas Pahwa, Sr. Adv. with Mr. Manish Bishnoi, Mr. Karan Khanuja, Mr. Shadman Ahmed & Mr.Tushar Agarwal, Advs.

versus

CBI & ORS. ..... Respondents

Through: Mr.Ashutosh Ghade with Mr.Nikhil, Advs.
for CBI.
Mr.Ravinder Agarwal, Adv. for CVC.
Mr.V.S.R.Krishna, Adv. for Railways.
Mr.Anil Soni, CGSC with Mr.Abhinav Tyagi, Adv. for UOI.

\+ CRL.M.C. 5095/2017

SH. SANDEEP SILAS ..... Petitioner

Through: Mr. Manish Bishnoi, Mr.Archit Gupta & Mr.Abhijit Das, Advs.

versus

CBI & ORS. ..... Respondents

Through: Mr.Nikhil Goel, Spl.P.P. with Mr.Gurpreet Hora, Adv. for CBI.
Mr.Ravinder Agarwal, Adv. for CVC.
Mr.V.S.R.Krishna, Adv. for Railways.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

JUDGMENT

1. This batch of four petitions under Section 482 of the Code of Criminal Procedure, 1973 has been filed by two senior officers of the

Indian Railways. *Crl.M.C. No.3137/2017* and *Crl.M.C. No.3141/2017* assail identical but separate sanction orders dated 14.03.2017 passed by the Minister of Railways, granting approval for the petitioners' prosecution under the Prevention of Corruption Act, 1988 (hereinafter referred to as "PC Act") as also the consequential order dated 01.07.2017 passed by the learned Trial Court taking cognizance against them. *Crl.M.C. No.5094/2017* and *Crl.M.C. No.5095/2017* impugn the order dated 08.05.2017, whereby the learned Trial Court has rejected the petitioners' application seeking a direction to the Sanctioning Authority to refer the matter regarding grant of sanction for their prosecution to the Department of Personnel and Training, Government of India (hereinafter referred to as "DoPT") for a final decision, in compliance of the DoPT's OMs dated 15/17.10.1986, 06.11.2006 and 20.12.2006. For the sake of convenience, only the facts of *Crl.M.C. No.3137/2017* are being referred to hereinbelow.

2. The petitioner who is a senior government official working with the Indian Railways, was holding the post of Chief Commercial Manager (Catering), Northern Railways (hereinafter referred to as "CCM (Catering)") w.e.f. 25/26.05.2014 against Leave Vacancy. Based on a joint surprise check conducted on 22.08.2014 by the Central Bureau of Investigation (hereinafter referred to as "CBI") in Rajdhani and Shatabdi Trains, a FIR bearing no. RC-DAI-2015-A-0032 was registered u/s 120B r/w section 420 of the IPC and section 13(2) r/w section 13(1)(d) of the PC Act against the petitioners and various other private caterers. Immediately after the registration of

the FIR on 14.10.2015, the petitioners were suspended from service w.e.f. 16.10.2015.

3. As per the allegations in the FIR, various licensee caterers appointed by the Indian Railways had been violating the mandatory terms and conditions of the license agreement executed between them and the Indian Railways for the supply of meals and Packaged Drinking Water (hereinafter referred to as "PDW") to passengers. It is alleged that instead of providing Rail Neer, the own brand of the Indian Railways Catering and Tourism Corporation (hereinafter referred to as "IRCTC"), the licensee caterers were supplying other brands of PDW to the passengers, thereby causing huge losses to the Indian Railways and corresponding gains to themselves. The specific role attributed to the petitioners is that, despite being aware of the default on the part of the licensee caterers, they did not take punitive action against them and, on the other hand, continued to release payments to them even though they had breached the terms of the license agreement.

4. After completing its investigation, the CBI, on 16.12.2015, filed a charge-sheet against the petitioners before the learned Trial Court and simultaneously sent a letter to the Ministry of Railways seeking sanction for their prosecution. Later on, upon a specific request, a copy of the charge-sheet was also forwarded by the CBI to the Ministry of Railways vide its letter dated 07/08.01.2016.

5. It is the common ground of the parties that no formal complaint of any wrongful losses was ever lodged by the Ministry of Railways. In fact, even after receiving the CBI's report and a copy of the

charge-sheet, the Review Committee of the Ministry of Railways decided not to continue with the further suspension of the petitioners and on 08.10.2016, specifically observed that the matter had been referred to the Central Vigilance Commission (hereinafter referred to as "CVC") for its advice, with the recommendation that the case was not fit for prosecution in any court of law or even for Regular Departmental Action (hereinafter referred to as "RDA"). The aforesaid reference was noted to have been made with the specific approval of the Railway Board.

6. Based upon the reference made to it, the CVC, on 02.05.2016, gave its opinion stating that no case was made out for grant of sanction for prosecution of the petitioners. The CVC specifically observed that it was in agreement with the Railway Board that the petitioners' cases were not even fit for RDA. In response to the CVC's opinion dated 02.05.2016, the CBI sent a letter dated 16.06.2016 to the Railway Board requesting for the reasons why it had opined against grant of sanction.

7. It is the case of the Ministry of Railways that on 18.10.2016, the matter alongwith the decision of the CVC advising non-grant of sanction, was put up before the Sanctioning Authority, i.e., the Minister of Railways, who in turn not only asked for the CBI's written opinion but also requested that the CVC once again offer its opinion before a final view is taken in the matter. At the request of the Sanctioning Authority, on 02.11.2016, the CVC once again reinforced its earlier advice by stating that it had already tendered its written advice on 02.05.2016, which was self-explanatory.

8. At this stage it may be noted that the Railway Board, after receiving the CVC's reply dated 02.11.2016, once again wrote to the CBI on 13.12.2016, setting out the details as to why in its opinion as concurred by the CVC, the petitioners' cases did not qualify for grant of sanction for prosecution. In its letter dated 13.12.2016, the Railway Board brought out various important factors, including the fact that the Indian Railways had not suffered any loss on account of the licensee caterers supplying PDW of brands other than Rail Neer and even otherwise, IRCTC had been able to sell its own brand of PDW, i.e, Rail Neer fully, if not to the licensees of Rajdhani and Shatabdi, but to those of the other mandatory trains/stations, as it was very much short in its capacity to produce and supply Rail Neer vis-a-vis its total demand of PDW. The said letter also pointed out that there was no question of any unlawful gain to the licensees, who have in fact been suffering losses irrespective of the brand of PDW they supply, since they were being paid only a fixed amount of Rs.15 per bottle, whereas the cost of a bottle of Rail Neer and other brands of PDW is at least Rs.18.08/- and Rs.14.49/- respectively, excluding the cost of transportation. Therefore, the licensees had at best cut their losses when supplying other brands of PDW instead of Rail Neer. It was also pointed out that at such a senior level as CCM (Catering), the petitioners were responsible for the overall supervision of catering provisions in hundreds of trains and stations in the zonal railway and in that process, were assisted by a number of officers and staff members. In fact, keeping in view the issues flagged by the CBI, Shri Sandeep Silas, the petitioner in *Crl.M.C.*

No.3137/2017 had himself made a suggestion that Rail Neer be directly supplied to the licensees of premium trains and payments be released to them by the Ministry of Railways directly.

9. It appears that the CBI gave a point-wise reply to the issues brought forth by the Railway Board in its letter dated 13.12.2016 and once again reiterated that a *prima facie* case of abuse of office was made out against the petitioners and, therefore, sought sanction for their prosecution. In the meanwhile, keeping in view the fact that in the absence of any sanction order, no further action could be taken against the petitioners on the basis of the charge-sheet filed by the CBI, the learned Trial Court upon being informed that correspondence between the CBI and the competent authority was still ongoing, vide its letter dated 06.01.2017 granted one month's time to the Railway Board to take a decision on the question of sanction. Since no decision was taken within the time so granted, another reminder to the same effect was directed to be issued by the learned Trial Court vide its order dated 08.02.2017.

10. Pursuant to the reminders issued by the learned Trial Court, the Sanctioning Authority, vide its impugned order dated 14.03.2017, granted sanction for the prosecution of the petitioners in the following terms :-

"*SANCTION ORDER*

> *1. WHEREAS, CBI, ACB, New Delhi has sought sanction for prosecution of Shri.M.S.Chalia and Shri. Sandeep Silas, both the then CCM/Catering/Northern Railway and thus a public servant for alleged commission of offences punishable under section 120-B r/w section 420 IPC and under section*

13(2) r/w 13 (i)(d) of Prevention of Corruption Act, 1988 and substantive offences thereof on the basis of allegations and materials emerging there from. The brief details of the case are as under:-

(iii) CBI, ACB, New Delhi has registered a regular case no. RC-DA-1-2015-A-0032 under section 120-B r/w section 420 IPC and under section 13(2) r/w 13(i)(d) of Prevention of Corruption Act, 1988 on 14.10.2015 against S/Shri M.S.Chalia, the then CCM/Catering/NR and Sandeep Silas, the then CCM/Catering/ NR and other private persons and others companies on the basis of a complaint arising out of preliminary inquiry in PE35A/2014-DLI conducted by Shri Raman Kumar Shukla, Inspector CBl, ACB, Delhi regarding alleged violation of terms and conditions of contract agreement executed between Railway and the licensee caterers namely (i) M/s R.K.Associates, New Delhi (ii) M/s Satyam Caterer Pvt. Ltd, New Delhi (iii) M/s Doon Caterers, New Delhi, (iv) M/s Ambuj Hotel and Real Estates, New Delhi, (v) M/s P.K.Associates Pvt. Ltd., (vi) M/s Sunshine Pvt. Ltd. (vii) M/s Brandavan Food Product, New Delhi & (viii) M/s Food World for supply of Meals and Rail Neer, Packaged Drinking Water (PDW) in Rajdhani and Shatabdi trains during the year 2013-14.

(iv) Whereas, it is alleged that as per para 1.3.4 of the agreements executed between the Railways and the licensees and which were signed by the said Shri M.S.Chalia, it was mandatory for the licensee to sell/distribute or serve Rail Neer (PDW) to passengers on board in such quantities and at rates as may be prescribed by the Railways on the Premium Trains from time to time. In case of non availability/inadequate supply of Rail Neer by the Railways/IRCTC, the licensees shall be permitted to sell packaged drinking water of brands approved by Railway, for which prior approval of the Railway in writing was to be taken by the licensees

2. AND WHEREAS, it is alleged that the licensees continued to supply other cheap brand of packaged drinking water without taking written approval from the competent

authority (as mandated under the contract condition) i.e. Chief Commercial Manager/Catering. Shri M.S.Chalia and Shri Sandeep Silas who were working as Chief Commercial Manager (Catering) were in the knowledge of this violation of contract conditions but did not take any appropriate action to penalize the licensees. This inaction has resulted in undue gains to the licensees and caused financial loss to the IRCTC/Indian Railways.

3. AND WHEREAS, the President, being the authority competent to remove the said Shri M.S.Chalia and Shri Sandeep Silas from service, after examining the statements of witnesses and documents related to the case with regard to the above allegations observed that conduct of the officers prima facie appear to be malafide and thus being satisfied that a prima facie case is made out against Shri M.S.Chalia and Shri Sandeep Silas for according sanction for prosecution of Shri M.S.Chalia and Shri Sandeep Silas for offences punishable under section 120-B r/w section 420 IPC and under section 13(2) r/w 13(i) (d) of Prevention of Corruption Act, 1988 and as such offences in respect of acts aforesaid and for taking cognizance of the such offences by a court of competent jurisdiction.

4. NOW THEREFORE, the President hereby accord sanction under section 19 of Prevention of Corruption Act, 1988 for the prosecution of the said Shri M.S.Chalia and Shri Sandeep Silas for the offences and any other offences in respect of the aforesaid acts and for taking cognizance of the said offences by a court of competent jurisdiction."

11. Immediately upon learning about the grant of sanction, the petitioners made a representation dated 23.03.2017 to the Cabinet Secretary, Government of India with a request to order the CBI not to proceed with the filing of the sanction order before the learned Trial Court, until the matter was duly examined by the DoPT as per the procedure prescribed in its office memorandums (OMs). The petitioners also moved an application before the learned Trial Court

on 31.03.2017, contending that the sanction order dated 14.03.2017 had been granted without complying with the DoPT's OM dated 05.02.2016, which was stated to categorically mandate a reference to the DoPT in all cases where there is a disagreement between the Sanctioning Authority and CVC.

12. It also transpires that the CVC, upon being informed that the Sanctioning Authority had proceeded to grant sanction for the petitioners' prosecution despite its advice to the contrary, sent a letter dated 20.04.2017 to the Railway Board seeking a clarification as to whether the procedure prescribed in the DoPT's OMs dated 15/17.10.1986, 06.11.2006 and 20.12.2006 had been followed before issuing the impugned sanction order. Armed with a copy of the aforesaid letter dated 20.04.2017, the petitioners moved another application on 01.05.2017 before the learned Trial Court seeking a direction to the Sanctioning Authority to comply with the OMs dated 15/17.10.1986, 06.11.2006 and 20.12.2006, and refer the matter regarding the petitioners' prosecution to the DoPT for a final decision.

13. The petitioners' applications dated 31.03.2017 and 01.05.2017 were rejected by a common order dated 08.05.2017, which has been challenged in *Crl.M.C. No.5095/2017* and *Crl.M.C. No.5094/2017*. Thereafter, the learned Trial Court passed the order dated 01.07.2017 taking cognizance against the petitioners on the basis of the charge-sheet filed by the CBI and the sanction order issued by the Sanctioning Authority, which has also been impugned before this Court by way of *Crl.M.C. No.3137/2017* and *Crl.M.C.*

No.3141/2017.

14. Before referring to the submissions made by the learned counsel for the parties, it may also be appropriate to note that during the pendency of the present writ petitions, the petitioners had preferred applications before the Sanctioning Authority seeking review of the decision to grant sanction for their prosecution. The matter was thereafter referred to the DoPT, which is stated to have now informed the Sanctioning Authority that in the present case, there was no requirement for the matter to be referred to it. It has also come on record that vide its decision dated 20.12.2018, the Sanctioning Authority has rejected the petitioners' aforesaid applications seeking review of the impugned sanction order, by placing reliance on the decision in ***State of Himachal Pradesh v. Nishant Sareen [2010 14 SCC 527]***, wherein the Supreme Court has held that a competent authority under Section 19(1) of the PC Act can review its decision to grant or refrain from granting sanction only when fresh material is placed before it and a change of opinion on the basis of the same material is impermissible.

15. At the outset, Mr. Arvind Nigam, learned Senior Counsel for Shri Sandeep Silas submits that the impugned sanction order having been issued in contravention of the CVC's repeated and binding advice to not grant sanction for the petitioners' prosecution, is *void ab initio*. In support of his contention that the CVC's advice was binding on the Sanctioning Authority, he places reliance on the decisions of the Supreme Court in ***Vineet Narain v. Union of India [(1998) 1 SCC 226]*** and ***Alok Kumar Verma v. Union of India and***

Anr. [2019 SCC OnLine SC 23] and contends that the CVC is a statutory body which has been specifically constituted to check corruption in public offices. For this purpose, under Sections 8(1)(a), (b), (f) and (h) of the Central Vigilance Commission Act, 2003 (hereinafter referred to as the "CVC Act") and Section 4 of the Delhi Special Police Establishment Act, 1946 (hereinafter referred to as "DSPE Act"), the CVC has been vested with wide powers of superintendence *inter alia* over the CBI and the vigilance administration of various ministries of the Central Government.

16. By drawing my attention to the decision of the Supreme Court in ***State of Bihar & Anr. v. JAC Saldhana and Ors. [(1980) 1 SCC 550]***, Mr. Nigam contends that the CVC's aforesaid powers of 'superintendence' are of wide amplitude and ensconce the power to exercise effective control over the actions, performance and discharge of duties by the Sanctioning Authority. He submits that the only limitation on the said power of the CVC is laid down in the provisos to Sections 8(1)(b) and 8(1)(h) of the CVC Act itself, neither of which prohibit the CVC from issuing directions to the competent authority under Section 19(1) of the PC Act to grant or refrain from granting sanction for the prosecution of public officers. Thus, Mr. Nigam's submission is that given the pivotal role played by a statutory body like the CVC in ensuring transparency and good governance in the Indian democracy, its recommendations cannot merely be treated as advisory, but constitute a binding mandate on the Sanctioning Authority. In fact, if the CVC's repeated advice is permitted to be ignored, it will frustrate the very object of the

creation of the CVC and the enactment of the CVC Act, resulting in the frivolous prosecution of public servants for bona fide decisions taken by them while discharging their official duties.

17. In support of his contention that the advice of the CVC was binding on the CBI, Mr.Nigam also relies on the DoPT's OMs dated 15/17.10.1986, 06.11.2006 and 20.12.2006 and submits that the concerned ministry is required to issue sanction orders for prosecution only in accordance with the advice of the CVC. He submits that the aforesaid OMs also clarify that if the concerned ministry/department proposes not to accept the binding advice of the CVC, the case has to be referred to the DoPT for a final decision. He states that in the present case, the CVC not only initially advised against grant of sanction, but even after reconsideration had reiterated its earlier advice that no case was made out either for grant of sanction or for RDA against the petitioners. In these circumstances, there was absolutely no reason for the Sanctioning Authority to accord sanction for the petitioners' prosecution, and that too without referring the matter to the DoPT in terms of its OMs dated 15/17.10.1986, 06.11.2006 and 20.12.2006. He, thus, contends that the sanction order having been passed without following the procedure prescribed in the DoPT's OMs, it is illegal and liable to be quashed.

18. Mr.Nigam further submits that the sanction order shows complete non-application of mind inasmuch as it is a cryptic order which does not even reflect as to whether the Sanctioning Authority was aware of the CVC's repeated advice as also the recommendation

of the Railway Board, both of which had clearly opined that there was no case made out for grant of sanction in respect of the petitioners. He submits that if the Sanctioning Authority had been made aware of the CVC's advice, there was no reason as to why it would have straightaway granted sanction without even referring the matter to the DoPT. In support of his aforesaid contention, Mr.Nigam also relies on the opinion dated 02.07.2018 of the Chairman, Railway Board wherein it was categorically observed that crucial materials, namely the OM dated 06.11.2006 and other relevant materials, were not brought to the notice of the Sanctioning Authority and there was procedural deviation while passing the impugned sanction order, on account of which the Chairman had recommended that the permission of the Court be sought for withdrawing the sanction so granted. He further submits that despite the specific recommendation of the Chairman, Railway Board to withdraw the sanction so granted, the Sanctioning Authority has rejected the petitioners' application seeking recall of sanction only on the premise that any reconsideration of the said order at this stage would be contrary to the decision of the Supreme Court in ***Nishant Sareen (supra)***, without appreciating the fact all the relevant documents had not been placed before the Sanctioning Authority.

19. Lastly, Mr.Nigam submits that the present case is a classic example of situations where honest officers are being compelled to face criminal prosecution even though there is not even an *iota* of doubt that there is absolutely no criminality involved in the alleged action of the petitioners and the same could at best be treated as non-

compliance of some of the terms and conditions of the license agreement by the licensees, which admittedly had not resulted in any kind of loss to the railways or any kind of gain to the petitioners. He submits that even though there was no loss of any kind to Indian Railways or any gain to the petitioners, the CBI has, without any basis, presumed that there has been loss to the Railways on the premise that the cost of the PDW actually supplied has to be treated as nil, merely because it was not Rail Neer. He, thus, contends that the wholly unwarranted prosecution of the petitioners on the basis of untenable presumptions by the CBI has resulted in a complete failure of justice and, therefore, submits that this Court ought to exercise its inherent jurisdiction under Section 482 of the CrPC to quash the sanction order and the other consequential orders.

20. Mr.Vikas Pahwa, learned Senior Counsel for Shri M.S. Chalia while reiterating the submissions made by Mr.Nigam, submits that the impugned sanction order completely ignores the advice not only of the CVC but also of the Railway Board, which clearly states that no case was made out for grant of sanction for the prosecution of the petitioners. He submits that while the sanction order does not show any application of mind, the advice of the CVC given on 02.05.2016 leaves no manner of doubt that the CVC had perused not only the investigation report and comments of the CBI, but also those of the administrative department and had thereafter come to a considered conclusion that no case was made out for grant of sanction. He contends that even the Railway Board on 13.12.2016, after dealing with the allegations against the petitioners in detail, had given a

comprehensive opinion recommending non-grant of sanction, which advice was reinforced by its Chairman on 02.07.2018, when he reiterated that the Ministry of Railway does not have a case to defend in the matter of sanction for prosecution and the sanction order should be withdrawn.

21. The next submission of Mr.Pahwa is that the Sanctioning Authority, while according sanction, did not even examine whether the essential ingredients of the offences alleged against the petitioners were made out. He contends that there was no allegation regarding any illegal gratification, personal benefit, abuse of official position or any dishonest intention on the part of the petitioners, which is mandatory for prosecution under Section 13(1)(d) of the PC Act. He states that the Sanctioning Authority has also failed to appreciate that the criminal case against the petitioners had been registered not on the basis of any complaint but on the basis of source information after the CBI had conducted inspections in various trains.

22. Mr. Pahwa further draws my attention to the annual report of the IRCTC as also the opinion dated 02.07.2018 of the Chairman, Railway Board in support of his contention that even as per the Indian Railways, there has neither been any wrongful loss to them nor any wrongful gain to anyone on account of the licensee caterers providing PDW of brands other than Rail Neer, as IRCTC has been able to satisfy only 25-30% of the total demand of PDW in trains and mandatory stations. He, thus, contends that in such circumstances the supply of PDW other than Rail Neer by the licensees could not be

treated as such an act that warrants criminal action against the petitioners. He further submits that not only the Sanctioning Authority, but even the learned Trial Court has failed to appreciate that at best it was a case of non-compliance of the terms and conditions of the license by the caterers in question, who are alleged to have been supplying PDW other than Rail Neer without taking prior approval, for which penalties were levied against them during the period 2013-14. He, therefore, contends that even this presumption that the petitioners had not taken any action against the erring contractors is contrary to the record, which factor has been simply overlooked by the Sanctioning Authority as also by the learned Trial Court.

23. On the other hand, Mr. Nikhil Goel, learned Special Public Prosecutor for the CBI while opposing the petitions, submits that the petitions themselves are not maintainable, as the legality of the impugned sanction order is essentially a matter of trial and cannot be decided by this Court in exercise of its inherent powers under Section 482 of the CrPC at this stage. While relying on the decisions of the Supreme Court in ***Prakash Singh Badal v. State of Punjab [(2007) 1 SCC 1]*** and ***Director, CBI v. Ashok Kumar Aswal [(2015) 16 SCC 163]***, he states that the validity of a sanction order has to be tested on the touchstone of prejudice to the accused, which is essentially a question of fact that should be left to be determined in the course of trial. He submits that at this pre-mature stage, this Court only has the power to see whether the Sanctioning Authority was competent to pass the sanction order and if it had applied its mind to all the

relevant material before passing the same. Therefore, barring the question of the competence of the Sanctioning Authority and whether it had applied its mind to all the relevant material while passing the sanction order, everything else is a matter of trial and cannot be probed into by this Court at this stage.

24. Taking his aforesaid plea further, Mr. Goel submits that Section 19 of the PC Act is a complete code in itself for the trial of public servants for offences alleged to have been committed under the said Act. While relying upon the decision of the Supreme Court in ***Vivek Batra v. Union of India [(2017) 1 SCC 69]***, he states that the only requirement under Section 19(1) of the PC Act, is a sanction order passed by a *competent* authority and any inter departmental disputes prior to the passing of the sanction order are of no consequence to the validity of the same. In the facts of the present case, the petitioners being in the employment of the Ministry of Railways, the sanction for their prosecution was duly issued by the Minister of Railways on behalf of the President of India, in terms of Section 19(1)(a) of the PC Act and, therefore, there was no irregularity whatsoever in the passing of the impugned sanction order. He contends that merely because the CVC was of a different opinion, it did not prevent the competent authority from passing an order granting sanction for prosecution, on the basis of its subjective satisfaction as to the necessity of passing such an order.

25. Mr. Goel further places reliance on the decision of the Supreme Court in ***State of Maharashtra v. Mahesh G. Jain [(2013) 4 SCC 81]*** to contend that, while examining whether the sanction order was

passed after due application of mind, this Court cannot go into the adequacy of the material placed before the Sanctioning Authority, as it does not sit in appeal over the sanction order. On the other hand, in determining the aforesaid issue, this Court can only consider the limited question as to whether the requisite material was placed before the Sanctioning Authority, which includes materials in favour of the accused persons, i.e., the petitioners. He submits that when the sanction order itself clearly states that it was passed after considering all the relevant materials, there is no reason to doubt that the CVC's opinions dated 02.05.2016 and 02.11.2016 in favour of the petitioners, were placed before the Sanctioning Authority alongwith the CBI's detailed report dated 16.12.2015 and a copy of the charge-sheet.

26. In support of his aforesaid contention that all the relevant materials were placed before the Sanctioning Authority, Mr. Goel also draws my attention to the reply filed by the Ministry of Railways, wherein it has been clearly stated that the sanction for the petitioners' prosecution under the PC Act, was duly granted upon proper application of mind and after considering all the relevant materials on record. He further places reliance on the affidavit filed by the Ministry of Railways pursuant to the directions of this Court, categorically stating that the impugned sanction order could not be reviewed as no fresh facts were brought out so as to warrant a withdrawal of the sanction. Thus, Mr. Goel's contention is that there is absolutely no merit in the petitioners' plea that the sanction order suffers from non-application of mind on account of the relevant

documents not having been placed before the Sanctioning Authority.

27. Without prejudice to his aforesaid contention that this Court cannot go into the merits of the sanction order at this stage of the proceedings, Mr. Goel submits that the material on record makes it evident that there is a *prima facie* case against the petitioners. He states that as per the terms of the license agreement between the licensee caterers and the Indian Railways, it was incumbent upon the former to supply Rail Neer to the passengers of Rajdhani and Shatabdi trains and they were allowed to supply other approved brands of PDW only in the event that Rail Neer was unavailable, after obtaining the approval of the CCM (Catering). However, when the CBI conducted its surprise check on 22.08.2014, various licensee caterers were found to be supplying other brands of PDW in Rajdhani and Shatabdi trains, despite the ample availability of Rail Neer, thereby causing huge losses to the India Railways. He further submits that the loss to the Indian Railways aside, the petitioners were charged with cheating and criminal misconduct for releasing payments to the defaulting licensee caterers, inspite of the Railway Board's specific instructions to take strict action against them and withhold payment. In fact, contrary to the instructions of the Railway Board, the petitioners did not take any action against the defaulting licensee caterers for breaching the terms of their license agreements, which shows the petitioners' complicity in the caterers' criminal conduct.

28. On the merits of the impugned sanction order, Mr. Goel further draws my attention to the charge-sheet filed by the CBI and contends

that in April 2013, a decision had been taken to initiate strict action against the defaulting licensee caterers. A draft letter to this effect was prepared and placed before Shri M.S. Chalia, who in turn removed the phrase "punitive action will be taken against the defaulting licensees" from the same, thereby clearly showing his mala fide intention. Furthermore, there was incriminating evidence of *quid pro quo* with respect to Shri M.S. Chalia, from whose residence a letter from one of the defaulting licensee caterers was recovered, which essentially offered jobs to 9 candidates from Shri M.S. Chalia's family owned trust. Thus, Mr. Goel's contention is that there was ample material on record warranting the issuance of a sanction order in respect of the petitioners.

29. In response to the petitioners' contention that in the light of the differences in the opinions of the Sanctioning Authority and CVC, it was incumbent upon the Sanctioning Authority to refer the matter to the DoPT for a final decision, Mr. Goel contends that OMs are issued to navigate the internal processes of the executive department and cannot be used to govern the exercise of power granted by a statute. Be that as it may, he states that the DoPT's OMs dated 15/17.10.1986, 06.11.2006 and 20.12.2006 relied upon by the petitioners, do not mandate a reference to the DoPT in every case where there is a disagreement between the competent authority and the CVC with respect to the grant of sanction for prosecution. By drawing my attention to clause 2.2(iii) of the OM dated 15/17.10.1986, Clause 2(iv) of the OM dated 06.11.2006 as also to the relevant paragraph in the OM dated 20.12.2006, he contends that

a reference to the DoPT is only necessary in cases where the CVC has advised grant of sanction and the competent authority is of a different opinion. In converse situations like the present case where the CVC is of the opinion that no sanction ought to be granted and the competent authority is convinced of the necessity of passing a sanction order, a reference to the DoPT is not mandatory. Mr. Goel's contention, thus, is that the petitioners' reliance on the DoPT's OMs dated 15/17.10.1986, 06.11.2006 and 20.12.2006 is wholly misconceived, as they neither govern the exercise of power under Section 19(1) of the PC Act, nor do they contemplate a reference to the DoPT in cases like the present where the competent authority wants to accord sanction for prosecution as against the CVC's advice for non-grant of sanction.

30. Finally, Mr. Goel submits that the petitioner's reliance on Section 8 of the CVC Act is entirely misplaced, as it neither expressly nor impliedly controls the power of a competent authority to grant sanction under Section 19(1) of the PC Act. He further states that the Sanctioning Authority, which has an independent existence under Section 19 of the PC Act, is not subordinate to the CVC and, therefore, the CVC's opinion is at best advisory and cannot constitute a binding directive on the Sanctioning Authority. By placing reliance on the decision of the Supreme Court in ***Centre for PIL & Anr. v. Union of India & Anr. [(2011) 4 SCC 1]***, he contends that the sole purpose behind setting up the CVC was to improve the vigilance administration of the country and it does not in any way control the exercise of power of the competent authority under section 19(1) of

the PC Act.

31. Mr.V.S.R. Krishna, learned counsel for the Ministry of Railways briefly submits that the impugned sanction order was issued by the Sanctioning Authority only after considering the conflicting opinions of the CBI and the CVC. He states that it is precisely for this reason that the Sanctioning Authority was compelled to reject the petitioners' application seeking review of the sanction order, as the petitioners had not been able to bring on record any fresh material so as to make out a case for recalling or reviewing the decision to grant sanction for their prosecution. He, therefore, contends that there is absolutely no merit in the petitioners' plea that the impugned sanction order suffers from complete non-application of mind on account of the relevant materials not having been considered by the Sanctioning Authority.

32. It may also be noted that although Mr. Ravinder Agarwal had entered appearance on behalf of the CVC/Respondent No. 4, neither any counter affidavit has been filed nor have any submissions been made on behalf of the said respondent.

33. I have heard the learned counsel for the parties at length and with their assistance perused the record. On the basis of the rival submissions of the learned counsel for the parties, I find that the preliminary issue which arises for my consideration is whether this Court can interfere with the decision of a competent authority to grant sanction under Section 19 of the PC Act for the prosecution of a public servant at this stage, when the trial is yet to commence. It is only if the answer to the aforesaid issue is in the affirmative that the

second issue would arise as to whether the sanction order suffers from any infirmity so as to warrant interference by this Court. Another connected issue which has been raised is whether in terms of the DoPT's OMs dated 15/17.10.1986, 06.11.2006 and 20.12.2006, it was mandatory for the Sanctioning Authority to refer the matter to the DoPT, before passing the sanction order.

34. Before dealing with the rival contentions of the parties, it may be useful to refer to Section 19 of the PC Act, which is reproduced hereinbelow for the sake of ready reference:-

> *"**19. Previous sanction necessary for prosecution.**—*
>
> *(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—*
> *(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;*
> *(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;*
> *(c) in the case of any other person, of the authority competent to remove him from his office.*
>
> *(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.*
>
> *(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—*

(a) ***no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;***
(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;
(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—
(a) error includes competency of the authority to grant sanction;
(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

35. As regards the preliminary issue, a bare reading of Section 19(1) shows that a valid sanction order is a *sine qua non* for the trial of a public servant under the provisions of the PC Act. It is well settled that the very purpose of the protection granted under Section 19(1) is to prevent honest public officers from frivolous prosecution and, therefore, the issue regarding the validity of the sanction order must be resolved at the earliest so as to forward one of the foremost objectives of the PC Act. In fact, since the issue regarding the

validity of the sanction order goes to the very root of the trial court's jurisdiction to take cognizance against a public officer, the aforesaid issue, if raised, can be decided at the pre-trial stage also. There is absolutely nothing in Section 19 of the PC Act to suggest that such an issue, if raised at a pre-trial stage, cannot be examined by this Court by exercising its inherent powers under Section 482 of the CrPC. On the other hand, a perusal of Section 19 shows that in cases where the Court comes to a conclusion that there is a manifest failure of justice, it can examine the validity of the sanction order and if need be, interfere with the same. Reliance may be placed upon the decision in ***Nanjappa v. State of Karnataka [(2015) 14 SCC 186]***, wherein the Supreme Court while referring to its earlier decision in ***State of Karnataka v. C. Nagarajaswamy [(2005) 8 SCC 370]***, held as follows:-

> *"22.* ***The legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption Act is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings.*** *The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for the prosecution in accordance with law. If the trial court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution."*

36. Reference may also be made to the decision in ***Ashok Kumar Aggarwal v. CBI & Ors. [(2016) SCC OnLine Del 214]***, wherein this Court while dealing with the issue of the validity of a sanction order at the pre-evidence stage, rejected the contention of the official respondents therein that the aforesaid issue can only be determined after evidence is adduced at trial. The relevant paragraphs 50, 52 and 54 of the decision in ***Ashok Kumar Aggarwal (supra)*** read as under:-

> *"50. From a conspectus of the decisions of the Supreme Court as cited above the legal position that emerges is that the question of validity of a sanction must be decided as soon as it is raised and cannot be postponed to a later stage of trial, as an invalid sanction goes to the very root of the jurisdiction of the court that has taken cognizance. Considering that the cognizance taken by the Special Judge, CBI would be rendered non-est in light of section 19(1) of POCA, the dispute on validity must be adjudicated at the earliest...*
>
> * * *
>
> *52. It is trite to state that a sanction is a precursory sacrosanct step to initiate criminal proceedings against public officer, and the lack of a valid sanction precludes the court from taking cognizance of the an offence under section 19(1) POCA. Section 19(1) POCA affords protection to those public servants, who could get trapped in vexatious proceedings while discharge of their official functions. If this protection is not afforded to a public servant then the cognizance taken under section 19(1) POCA also stands vitiated.*
>
> * * *
>
> *54. In view of the above discussion…[t]he submission made on behalf of the official respondents to the effect that this Court ought not to determine disputed questions of fact is unfounded, baseless and contrary to the record and is, therefore, categorically negated and traversed."*

37. Thus, in view of the decision of the Supreme Court in ***Nanjappa (supra)*** as also of this Court in ***Ashok Kumar Aggarwal (supra)***, I find that there is absolutely no merit in the preliminary

objection raised by the learned counsel for the CBI that the present petitions are not maintainable at this stage. This Court can decide the issue of the validity of a sanction order at any stage of the proceedings, including the pre-trial stage when cognizance has already been taken and the trial proceedings are yet to be conducted, as is the case in the present petitions. However, the only precursor to any interference by the Court should be the occurrence of a manifest failure of justice, in the absence of which such judicial intervention would be in the teeth of Section 19(1) of the PC Act. In determining whether there has been a failure of justice in the present case, even though I do not propose to examine the merits of the sanction order, I cannot lose sight of the fact that the Railway Board and CVC have concurrently opined that the petitioners' cases are not even fit for RDA as also the fact that nothing has been pointed out on record to show any kind of loss to the Indian Railways. On the other hand, it is an admitted position that the entire stock of Rail Neer produced by IRCTC's Nangloi plant, was fully utilized as it was supplied not only in various trains but also to other mandatory stations. In these circumstances, if the petitioners are made to face trial under the PC Act, it will indeed lead to a failure of justice and the sanction order, if found to be defective on any count, will be liable to be set aside in terms of Section 19(3)(a) of the PC Act.

38. Having answered the preliminary issue before this Court in the affirmative, I may now examine whether the petitioners have made out any ground for this Court to exercise its inherent powers and interfere with the order dated 14.03.2017 granting sanction for their

prosecution. The learned counsel for the petitioners have raised two primary contentions to impugn the sanction order, the first being that it suffers from the vice of non-application of mind as it does not at all show that the Sanctioning Authority had considered the repeated advice given by the CVC as also the Railway Board to the effect that not even a case for RDA was made out against the petitioners. The second ground pressed by the learned counsel for the petitioners is that the sanction order having been passed without following the procedure prescribed in the DoPT's OMs dated 15/17.10.1986, 06.11.2006 and 20.12.2006, it is *void ab initio* and consequently, the cognizance taken by the learned Trial Court against the petitioners is also without jurisdiction.

39. As one of the main grounds on which the sanction order has been challenged is that it is contrary to the advice of the CVC, which as per the petitioners' submissions was binding on the Sanctioning Authority, it would be appropriate to refer to the recent decision of the Supreme Court in ***Alok Kumar Verma (supra)***, wherein the history of the constitution of the CVC has been summarized:-

> *"18. The organization i.e. CBI has grown over the years in its role, power and importance and today has become the premier investigative and prosecution agency of the country. The high stature and the pre-eminent position that the institution has acquired is largely on account of a strong perception of the necessity of having such a premier agency. Such a perception finds reflection in the conscious attempts of the Government of the day to introduce reforms, from time to time, so as to enable the institution to reach greater heights in terms of integrity, independence and confidence. A close look at such attempts will now be in order.*

19. In Vineet Narain (supra) such developments have already been taken note of in detail. The recommendations of the Committee headed by Shri N.N. Vohra constituted by Government Order No. S/7937/SS(ISP)/93 dated 9th July, 1993 and those of the Independent Review Committee (IRC) constituted by Government Order No. 226/2/97-AVD-II dated 8th September, 1997 has had a major role to play in giving the CBI and the CVC their present shape and form and the pivotal role and position that these two bodies have come to occupy in the system of law enforcement in the country. Incidentally, the CVC had been in existence as an administrative body on being established by Resolution No. 24/7/64-AVD dated 11th February, 1964 issued by the Central Government until conferment of statutory status by the CVC Act, 2003 on the basis of recommendations of the IRC, summary of which with regard to the CBI and CVC may now be taken note of.

"SUMMARY OF RECOMMENDATIONS

I. CBI and CVC

1. CVC to be conferred statutory status; appointment of Central Vigilance Commissioner to be made under the hand and seal of the President (para 4.2)

2. Constitution of a Committee for selection of CVC (para 4.3)

3. CVC to overview CBI's functioning (para 5)

4. CBI's reporting to Government to be streamlined without diluting its functional autonomy (para 3.3)

5. CVC to have a separate section in its Annual Report on the CBI's functioning after the supervisory function is transferred to it (para 6)

6. Constitution of a Selection Committee for identifying a panel of names for selection of Director CBI; final selection to be made by ACC from such panel (para 8.2)

7. Central Government to pursue with the State Governments to set up credible mechanism for selection of Police Chief (para 8.3)

8. Director CBI to have a minimum tenure of 2 years (para 8.4)

9. Transfer of incumbent Director CBI would need endorsement of the Selection Committee (para 8.5)

10. Director CBI to ensure full freedom for allocation of work within the Agency, including constitution of investigation teams (para 8.6)

11. Selection/extension of tenure of officers up to the level of Joint Director (JD) to be decided by a Board under Central Vigilance Commissioner; JD and above would need the approval of ACC (para 8.7)

12. Change in the existing Tenure Rules not recommended (para 8.8)

13. Proposals for improvement of infrastructure, methods of investigation, etc., to be decided urgently (para 8.9.2)

14. No need for creation of a permanent core group in the CBI (para 8.9.3)

15. Severe disciplinary action against officers who deviate from prescribed investigation procedures (para 9.1)

16. Director CBI to be responsible for ensuring time-limits for filing charge-sheets in courts (para 9.2)

17. Document on CBI's functioning to be published within three months (para 9.4)

18. Essential to protect officers at the decision-making levels from vexatious enquiries/prosecutions (para 10.6)

19. Secretaries to adhere strictly to prescribed time-frames for grant of permission for registration of PE/RC. CBI to be free to proceed if decision not conveyed within the specified time (para 10.9)

20. Secretary of Administrative Ministry to convey a decision regarding registration of PE/RC within 2 months of receipt of request. If not satisfied with decision, Director CBI free to make fresh reference to the Committee headed by Cabinet Secretary within a period of four weeks and the latter to decide thereon within a period of four weeks (para 10.10)

21. Protection under the Single Directive not to cover offences like bribery, when prima facie established in a successful trap (para 10.12)

22. Cases of disproportionate assets of Central Government and All India Services Officers to be brought within the ambit of the Single Directive (para 10.13)

23. Time-limit of 3 months for sanction for prosecution. Where consultation is required with the Attorney General or the Solicitor General, additional time of one month could be allowed (paras 10.14 and 10.15)

24. Government to undertake a review of the various types of offences notified for investigation by the CBI to retain focus on anti-corruption activities which is its primary objective (para 11.1)

25. Cases falling within the jurisdiction of the State Police which do not have inter-State or international ramifications should not be handed over to CBI by States/courts (para 11.2)

26. Government to establish Special Courts for the trial of CBI cases (11.3)

27. Severe action against officials found guilty of high-handedness; prompt action against those officials chastised by the courts (para 11.4)

28. Director CBI to conduct regular appraisal of personnel to weed out the corrupt and inefficient, and maintain strict discipline within the organization (para 11.5)"

20. In paragraph 58 of the report of this Court in Vineet Narain (supra) directions under Article 142 of the Constitution of India which were to hold the field till such time that the necessary statutory enactments are brought into force, came to be issued by this Court. Paragraph 58 of the report of this Court in Vineet Narain (supra) insofar as CVC and CBI are concerned is in the following terms:

"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."

21. What followed thereafter is the enactment of the CVC Act, 2003…

* * *

23. ***[T]he CVC Act, 2003 and the amendments made in the DSPE Act, 1946 were clearly made to bring the provisions thereof in proximity to the directions issued by this Court in Vineet Narain (supra) so far as the CVC and the CBI is concerned.****"*

40. At this stage, it may also be appropriate to note the relevant provisions of the CVC Act and the provisions of the DSPE Act as amended by the CVC Act and Lokpal and Lokayuktas Act, 2013, which read as under:-

Central Vigilance Commission Act, 2003

"8. Functions and powers of Central Vigilance Commission.-

(1) The functions and powers of the Commission shall be to-

(a) exercise superintendence over the functioning of the Delhi Special Police Establishment in so far as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988), or an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

(b) give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1946 (25 of 1946):

Provided that while exercising the powers of superintendence under clause (a) or giving directions under this clause, the Commission shall not exercise powers in such a manner so as to require the Delhi Special Police Establishment to investigate or dispose of any case in a particular manner;

(c) inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Government or a corporation established by or under any Central Act, Government company, society and any local authority owned or controlled by that Government, has committed an offence under the Prevention of Corruption Act, 1988 (49 of 1988) or an offence with which a public servant may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

(d) inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (2) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988 (49 of 1988) and an offence with which a public servant specified in subsection (2) may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

(e) review the progress of investigations conducted by the Delhi Special Police Establishment into offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) or the public servant may, under the Code

of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

(f) review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988 (49 of 1988);

(g) tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise;

(h) exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government:

Provided that nothing contained in this clause shall be deemed to authorize the Commission to exercise superintendence over the Vigilance administration in a manner not consistent with the directions relating to vigilance matters issued by the Government and to confer power upon the Commission to issue directions relating to any policy matters;

2. The persons referred to in clause (d) of subsection (1) are as follows:—

(a) members of All-India Services serving in connection with the affairs of the Union and Group 'A' officers of the Central Government;

(b) such level of officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf:

Provided that till such time a notification is issued under this clause, all officers of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in clause (d) of sub-section (1).

(c) on a reference made by the Lokpal under proviso to sub-section (1) of Section 20 of the Lokpal and Lokayuktas Act, 2013 (1 of 2014), the persons referred to in clause (d) of sub-section (1) shall also include—

(i) members of Group B, Group C and Group D services of the Central Government;

(ii) such level of officials or staff of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf:

Provided that till such time a notification is issued under this clause, all officials or staff of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred in clause (d) of sub-section (1).”

Delhi Special Police Establishment Act, 1946

*“**4. Superintendence and administration of Special Police Establishment.**— (1) The superintendence of the Delhi Special Police Establishment in so far as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988), shall vest in the Commission.*

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

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

41. Thus, what emerges is that, in consonance with the directions of the Supreme Court in ***Vineet Narain (supra)***, the CVC Act was

passed in 2003 to statutorily constitute the CVC as a special body with wide powers of surveillance to check corruption in public offices. Simultaneously, a corresponding amendment was also made in Section 4 of the DSPE Act, categorically vesting the powers of superintendence over the CBI in the CVC. It is, therefore, evident that the CVC has been specially constituted as an independent body to inquire or cause inquiries into offences allegedly committed under the PC Act by public officers. The provisions of Sections 8(1)(a), (b), (f) and (h) of the CVC Act and Section 4 of the DSPE Act, leave no manner of doubt that the CVC not only has the power of superintendence over the functioning of the CBI in so far as it relates to the investigation of offences alleged to have been committed under the PC Act, but also qua the vigilance administration of various ministries, corporations and local authorities controlled by the central government. There is absolutely no scope to interpret these provisions in such a narrow manner so as to exclude CVC's power of superintendence in cases like the present where senior public officers are sought to be tried for offences under the PC Act. As a consequence of the special status and pivotal role granted to it for checking corruption in public offices, the CVC's opinions have to be given due consideration and cannot merely be treated as inter-departmental consultations, as is sought to be contended by the learned counsel for the CBI.

42. In the light of my aforesaid conclusion, I may now examine the impugned sanction order. I find that the said order merely recites a gist of the allegations against the petitioners and read by itself, it

does not disclose whether the Sanctioning Authority had considered the advice tendered by the CVC on two separate occasions to not grant sanction for prosecution, which advice was also concurred by the Railway Board vide its letter dated 13.12.2016. While it is true that a sanction order should not be read pedantically, it should, so as to inspire confidence, at least demonstrate that the Sanctioning Authority had applied its mind to all the relevant material. In the present case, keeping in view the fact that there is no reference at all to the opinion of the CVC in the impugned sanction order, the subsequent recommendation of the Chairman, Railway Board to recall the sanction order, assumes importance and I deem it appropriate to refer to the same in *in extenso*:-

> *"13. Summing up it may be stated that:-*
> *i. Railway Administration was of the view that* ***there is no evidence of any criminality*** *and no adequate grounds to prosecute the officers (S.No.12 – page 33 to 71)*
>
> *ii. CVC agreed with Railway Administration that* ***no case is made out to sanction prosecution of the officers*** *and the cases against the officers is not fit even for regular departmental action (S No.12 – page 48).*
>
> *iii. A Committee comprising of Member(Staff), Member (Traffic) and Member (Mechanical) met on 08.04.16 to review the suspension of Shri Sandeep Silas.* ***Based on the findings of Railway Board Vigilance, the Committee unanimously opined that there is no case for further extension of suspension beyond 11.04.16 and this was approved by the then Hon'ble MR (S.No.15).***
>
> *iv. After receipt of CVC's advice that no case is made out to sanction prosecution, the competent authority sought for CBI written opinion on the advice tendered by CVC. The administration did not point out the Procedural deviation in*

such action of the sanctioning authority. On the other hand CBI requested for comments of Railway Administration and thereafter reiterated their findings. ***The sanctioning authority took his decision after this procedural deviation (Page 50 of S.No.12).***

v. Sanctioning authority after consideration of the entire material place before it, entertains any doubt on any point the competent authority may specify the doubt with sufficient particulars and may request the authority who h as sought sanction to clear the doubt. But that would be only to clear the doubt in order that the authority may apply its mind proper, and not for the purpose of coming to a conclusion as to whether such a sanction is to be granted or not. ***In the instant case without specifying any particular fact or doubt for clarification, the opinion of CBI on the advice tendered by CVC sought and thereafter the competent authority decided on the issue****.*

vi. ***The sanctioning authority was not in the knowledge of the fact that his disagreement with CVC had to be sent to DOP&T for resolution and once DOP&T gives its views, the Disciplinary Authority may have to take a considered final decision, keeping in view the advice given by DOP&T****.*

vii. CVC in its annual report has brought out that the Commission found that these were Acts of omission, procedural lapses and short-cuts, but the case did not exhibit any criminality on the part of CCMs and hence it did not advice sanction for prosecution. The Commission has observed that the instruction of the DOP&T is that where there is a disagreement between CVC and the DA, the matter has to be referred to the DOP&T for a final view. This is a case of deviation from the Commission's advice and of not following the laid down procedure of consultation with DoP&T (S.No.19).

viii. The matter was not submitted to DOP&T for resolution after the competent authority disagreed with the advice of CVC.

ix. As per decision of Hon'ble Supreme Court in the case of PS Rajya Vs. State of Bihar (1196) 9 SCC 1; the Hon'ble Apex Court observed that the standard of Proof required to establish the guilt in a criminal case is far higher than the standard of proof required in a departmental case. In ***the instant case as per the advice of CVC the case of both Shri MS Chalia and Shri Sandeep Silas are not even fit for Regular Departmental Action*** *(S.No.12 – page 50).*

x. DOP&T vide OM dated 23.10.09 have stated that since sanction for prosecution by the competent authority is after satisfying itself regarding the misconduct of a person under PC Act, the natural conclusion would be that in case any prosecution is to be withdrawn in respect of such person the same competent authority may have to satisfy himself regarding the feasibility for withdrawing the prosecution against that person. The instructions also state that the matter was considered in consultation with the Ministry of Law and Justice, Department of Legal Affairs ***who have advised that the withdrawal of prosecution under Section 321 of Cr.P.C. may be approved by such authority which has accorded the sanction for prosecution in respect of the person*** *(S.No.17).*

13. Based on facts as brought out in preceding paras, ***Ministry of Railways do not have a case to defend in the matter of sanction for prosecution issued to the petitioners***. ***Perhaps the same was not adequately considered at the time of processing the sanction.*** *In this context the best course of action would be to seek permission of the Hon'ble Court for withdrawing the sanction.*"

43. Even though, Mr. Goel has vehemently contended that the refusal of the Sanctioning Authority to review its decision makes it clear that all the relevant material had already been considered by it at the time of passing the sanction order, I am unable to accept the said contention. In the light of the specific observations of the Chairman, Railway Board extracted hereinabove, as also the fact that

there is nothing in the impugned sanction order to demonstrate that the advice of the CVC was ever considered, I have no hesitation in coming to the conclusion that the sanction order does not show due application of mind. A subsequent bald averment on behalf of the Sanctioning Authority that all the material was duly considered by it while passing the sanction order, cannot compensate for the inherent shortcoming/defect in the said order. The sanction order by itself must make it evident that it was passed after considering all the relevant material. I am fortified in my aforesaid conclusion by the decision in ***CBI v. Ashok Kumar Aggarwal [(2014) 12 SCC 295]***, wherein the Supreme Court summarized the legal position regarding the essential features of a valid prosecution under the PC Act as follows:-

> *"16. In view of the above, the legal propositions can be summarised as under:*
>
> *16.1. The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.*
>
> *16.2. The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.*
>
> *16.3. The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.*

16.4. ***The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.***

16.5. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law."

44. Now coming to the issue regarding the Sanctioning Authority's failure to comply with the DoPT's OMs dated 15/17.10.1986, 06.11.2006 and 20.12.2006 and refer the matter to the DoPT for a final decision, in the wake of the divergence of opinions between the Sanctioning Authority and the CVC. While dealing with issue, it may be useful to refer to the relevant provisions of the DoPT's aforesaid OMs, which are extracted hereinbelow:-

OM dated 15/17.10.1986

"2.2 The following guidelines may be kept in view while dealing with cases of Sanction of prosecution.

(i) In cases in which the sanction for prosecution is required to be accorded in the same name of the President, the Central Vigilance Commission will advise the Ministry/ Department concerned and it would be for that Ministry/Department to consider the advice of the CVC and to take a decision as to whether or not the prosecution should be sanctioned;

(ii) In cases in which an authority other than the President is competent to sanction prosecution, and that authority does not propose to accord such sanction, it is required to report the case to the Central Vigilance Commission and take further action after considering the Central Vigilance Commission's advice, vide para 2(vii)(b) of the Government Resolution by which the Central Vigilance Commission was set up and the

Central Vigilance Commission's letter No.9/1/64-DP, dated 13th April, 1984;

(iii) In a case falling under (i) above, if the Central Vigilance Commission advises grant of sanction for prosecution but the Ministry/Department concerned proposes not to accept such advice, the case should be referred to this Department for a final decision;

(iv) In a case falling under (ii) above, if the Central Bureau of Investigation has sought sanction for prosecution and the Central Vigilance Commission has recommended grant of sanction and yet, the competent authority proposes not to grant sanction, the case should be referred to this Department for a final decision;

(v) Where two or more Government servants belonging to different Ministries/Departments, or under the control of different cadre controlling authorities are involved, the CBI will seek sanction from the respective Ministries/Departments, or the respective competent authorities in accordance with the procedure laid down in the case of one of the Govt. servants but sanction is refused in the case of other or others, the CBI will refer the case to this Department for Resolution of the conflict, if any, and for a final decision."

<u>OM dated 06.11.2006</u>

"2. Delay in the disposal of sanction of prosecution cases is not in the interest of the Government. The Government is keen that innocent officers should not needlessly face harassment through prosecution while at the same time the really culpable and guilty officers should not escape prosecution on account of failure of the competent authority to appreciate properly the fact brought out in the CBI investigation reports. In order to ensure that cases for grant of sanction for prosecution are disposed of quickly, it has been decided that the following measures should be adopted with immediate effect:-

(i) In cases investigated by the Central Bureau of

Investigation against any public servant who is not removable from his office except with the sanction of the President, the CBI forwards its final report of investigation to the CVC and also simultaneously endorses a copy of the report to the administrative Ministry/Department concerned the competent authority shall within three weeks formulate its tentative view regarding the action to be taken and seek the advice of the CVC in the matter.

(ii) The CVC would tender its advice within ten days to the concerned administrative Ministry/Department, which shall finalize its view in the matter within a week and issue orders for sanction for prosecution accordingly.

(iii) The concerned Ministry/Department shall refer the case to CVC for reconsideration only in exceptional cases when new facts come to light. The Committee of experts proposed to be set up by the CVC, with experts drawn from the civil services, public sector undertakings and banks shall examine the CBI's recommendation and the tentative view of the concerned Ministry/Department in greater detail and CVC would render appropriate advice to the competent authority based on the findings of the expert committee, within a fortnight;

(iv) If the CVC on reconsideration advices for grant of sanction, the concerned Ministry/Department will issue the requisite orders immediately. However, if the concerned Ministry/Department proposes not to accept the reconsidered advice of he CVC, the case will be referred to the Department of Personnel and Training for a final decision, as per the DOP&T O.M.No./134/2/85-AVD-I dated 17.10.1986."

OM dated 20.12.2006

"In continuation of the Department's O.M. of even number dated 6th November 2006 on the subject mentioned above, it has been decided to amend para 2 (iv) of the O.M. dated 6th November 2006 which shall now be read as under:-

"2. (iv) If the CVC on reconsideration advices for grant of

sanction, the concerned Ministry/Departments will issue the requisite orders immediate. However, if the concerned Ministry/Department proposes not to accept the reconsidered advice of the CVC, the case will be referred to the Department of Personnel & Training for a final decision, as per the DOP&T OM. No.134/2/85-AVD-I dated 17.10.1986. The Department of Personnel& Training shall decide the case within three weeks and convey its decision to the concerned Ministry/Department."

45. From a combined reading of the aforesaid OMs, the foremost thing which becomes evident is that the CVC has been assigned a very important role not only in the post-2003 OMs when it was already established as an independent statutory authority, but even in the pre-2003 OMs when the CVC Act had not even been passed. Paragraphs 2.2(i) to (iv) of the OM dated 15/17.10.1986 categorically stipulate that in case an executive department proposes to not accept the opinion of the CVC for grant of sanction, the matter must be referred to the DoPT for a final decision. The same position emerges from the OM dated 06.11.2006, wherein while laying down guidelines for checking the delay in granting sanction for prosecution, the DoPT had clearly mandated that in a case being investigated by the CBI against any public servant, the CBI must while forwarding the report to the administrative department of the concerned ministry, simultaneously forward a copy thereof to the CVC, which is then expected to give its advice within 10 days. Paragraphs 2.2(iii) and (iv) of this OM reiterate that in a case where the administrative department of the concerned ministry proposes to disregard the advice of the CVC for grant of sanction, a reference ought to be made to the DoPT for a final decision.

46. Even though, the language used in the aforesaid OMs may at the first blush, appear to suggest that a reference to DoPT is only necessary when the CVC has advised in favour of grant of sanction and the department wishes to disregard the same and not grant sanction, a careful perusal of all the three OMs shows that the paramount intent of these OMs is to give primacy to the advice of the CVC when there is a divergence of opinion between the concerned sanctioning authority and the CVC. There is nothing in the OMs to suggest that the DoPT is not enjoined to take a final decision regarding grant of sanction for prosecution in converse situations like the present case where the CVC advises against grant of sanction and the concerned administrative department proposes otherwise. To hold anything to the contrary, as is sought to be contended by the learned counsel for the CBI, would lead to a situation where the advice of the CVC would be given primacy in one situation and cannot be overruled by the department without reference to the DoPT, while in another situation the said advice could be simply disregarded by the department on its own. Such an interpretation of the OMs would not only undermine the important role assigned to the CVC under the CVC Act and DSPE Act, but would also dilute the powers of superintendence over the CBI vested in the CVC by virtue of the said enactments and would, thus, virtually render the CVC's power of superintendence redundant in a case where the CVC specifically advises against grant of sanction.

47. It must be borne in mind that the DoPT's OMs must be interpreted so as to forward the very purpose for which they were

issued in the first place. Once it is evident that the OMs in question were specifically issued to provide for situations where there is a divergence of opinion between the CVC and the concerned sanctioning authority, and they aim at giving primacy to the opinion of the former in such circumstances, there is no reason to hold that a reference to the DoPT is not essential where the advice of the CVC for not granting sanction is not acceptable to the concerned authority. In my view, only if the OMs are understood and implemented in the aforesaid manner, can the very purpose for which they have been issued be fulfilled. Thus, keeping in view the apparent intent of the DoPT when issuing the aforesaid OMs, I have no hesitation in holding that matters regarding grant of sanction ought to be referred to the DoPT in every case where the CVC and the concerned sanctioning authority are of differing views, irrespective of the fact as to whether the CVC's advice is in favour of or against the grant of sanction.

48. In the light of the admitted position that the Sanctioning Authority has issued the sanction order in total disregard of the CVC's advice without any reference to the DoPT, the said order, besides suffering from non-application of mind, is also contrary to the OMs dated 15/17.10.1986, 06.11.2006 and 20.12.2006 and, thus, cannot be sustained.

49. For the aforementioned reasons, the sanction order dated 14.03.2017 being wholly unsustainable is hereby quashed. Consequently, the order dated 08.05.2017 rejecting the petitioners' application for referring the matter to the DoPT for a final decision as

also the subsequent order dated 01.07.2017 passed by the learned Trial Court taking cognizance against the petitioners, are also set aside. The matter is remanded back to the Sanctioning Authority to reconsider the same after making an appropriate reference to the DoPT in accordance with the OMs dated 15/17.10.1986, 06.11.2006 and 20.12.2006. It is made clear that this Court has not expressed any opinion on the merits of the pleas taken by the petitioners that there is no case warranted for taking any criminal action against them and it will be open for the competent authority to take a fresh decision in this regard in accordance with the observations made hereinabove.

50. The writ petitions are allowed in the aforesaid terms with no order as to costs.

(REKHA PALLI)
JUDGE

MARCH 15 , 2019
sr