

Subrata Chatteraj vs Union Of India & Ors on 9 May, 2014

Equivalent citations: 2014 AIR SCW 2828, 2014 (8) SCC 768, AIR 2014 SC (CRIMINAL) 1376, 2014 (2) ABR (CRI) 576, (2014) 3 RECCRIR 419, (2014) 6 SCALE 593, (2014) 2 CURCRIR 545, (2014) 3 JLJR 78, (2014) 3 CURCC 18, (2014) 87 ALLCRIC 250, (2014) 58 OCR 905, (2014) 140 ALLINDCAS 183 (SC), 2014 (2) KLT SN 67 (KER)

Author: T.S. Thakur

Bench: C. Nagappan, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITON (CIVIL) NO.401 OF 2013

Subrata Chatteraj
Versus
Union of India & Ors.

...Appellant

...Respondents

WITH

WRIT PETITON (CIVIL) NO.402 OF 2013

AND

T.P. (C) NO.445 OF 2014

AND

WRIT PETITON (CIVIL) NO.413 OF 2013

Alok Jena
Versus
Union of India & Ors.

...Appellant

...Respondents

WITH

WRIT PETITON (CIVIL) NO.324 OF 2014

J U D G M E N T

T.S. THAKUR, J.

1. Writ Petitions seeking transfer of investigation from the State Agencies to the Central Bureau of Investigation (CBI) under the Delhi Special Police Establishment Act, is by no means uncommon in the High Courts in this country. Some, if not most of such cases in due course travel to this Court also, where, issues touching the powers of the High Courts and at times the power of this Court to direct such transfers are raised by the parties. The jurisdictional aspect is, however, no longer *res integra*, the same having been answered authoritatively by a Constitution Bench of this Court in *State of West Bengal & Ors. v. Committee for Protection of Democratic Rights, West Bengal & Ors.* (2010) 3 SCC 571. This Court in that case was examining whether the federal structure and the principles of separation of powers, made it impermissible for the superior courts to direct transfer of investigation from the State Police to the CBI. Rejecting the contention, this Court held that power of judicial review itself being a basic feature of the Constitution, the writ courts could issue appropriate writ, directions and orders to protect the fundamental rights of the citizens. This Court observed:

“51. The Constitution of India expressly confers the power of judicial review on this Court and the High Courts under Articles 32 and 226 respectively. Dr. B.R. Ambedkar described Article 32 as the very soul of the Constitution—the very heart of it—the most important article. By now, it is well settled that the power of judicial review, vested in the Supreme Court and the High Courts under the said articles of the Constitution, is an integral part and essential feature of the Constitution, constituting part of its basic structure. Therefore, ordinarily, the power of the High Court and this Court to test the constitutional validity of legislations can never be ousted or even abridged. Moreover, Article 13 of the Constitution not only declares the pre-Constitution laws as void to the extent to which they are inconsistent with the fundamental rights, it also prohibits the State from making a law which either takes away totally or abrogates in part a fundamental right. Therefore, judicial review of laws is embedded in the Constitution by virtue of Article 13 read with Articles 32 and 226 of our Constitution.

52. It is manifest from the language of Article 245 of the Constitution that all legislative powers of Parliament or the State Legislatures are expressly made subject to other provisions of the Constitution, which obviously would include the rights conferred in Part III of the Constitution. Whether there is a contravention of any of the rights so conferred, is to be decided only by the constitutional courts, which are empowered not only to declare a law as unconstitutional but also to enforce fundamental rights by issuing directions or orders or writs of or “in the nature of” *mandamus*, *certiorari*, *habeas corpus*, prohibition and *quo warranto* for this purpose.

53. It is pertinent to note that Article 32 of the Constitution is also contained in Part III of the Constitution, which enumerates the fundamental rights and not alongside other articles of the Constitution which define the general jurisdiction of the Supreme Court. Thus, being a fundamental right itself, it is the duty of this Court to ensure that no fundamental right is contravened or abridged by any statutory or constitutional provision. Moreover, it is also plain from the expression “in the nature of” employed

in clause (2) of Article 32 that the power conferred by the said clause is in the widest terms and is not confined to issuing the high prerogative writs specified in the said clause but includes within its ambit the power to issue any directions or orders or writs which may be appropriate for enforcement of the fundamental rights.

Therefore, even when the conditions for issue of any of these writs are not fulfilled, this Court would not be constrained to fold its hands in despair and plead its inability to help the citizen who has come before it for judicial redress (per P.N. Bhagwati, J. in *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 161)."

2. This Court summed up the conclusions in the following words:

"68. Thus, having examined the rival contentions in the context of the Constitutional Scheme, we conclude as follows:

(i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any Constitutional or Statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law.

The said Article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the Constitutional Courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between the Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than the Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between the Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of "the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review".

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that Courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure.

(v) Restriction on the Parliament by the Constitution and restriction on the Executive by the Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Article 32 and 226 of the Constitution.

(vi) If in terms of Entry 2 of List II of The Seventh Schedule on the one hand and Entry 2A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the Statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the court fails to grant relief, it would be failing in its constitutional duty.

(vii) When the Special Police Act itself provides that subject to the consent by the State, the CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State Police, the court can also exercise its constitutional power of judicial review and direct the CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the Constitutional Courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.

69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly” (emphasis supplied)

3. Having said that this Court sounded a note of caution against transfer of cases to CBI for mere asking and observed:

“70. Before parting with the case, 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. In so far as the question of issuing a direction to the 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 extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill 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 the 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)

4. We may at this stage refer to a few cases in which this Court has either directed transfer of investigation to the CBI or upheld orders passed by the High Court directing such transfer.

5. In *Inder Singh v. State of Punjab* (1994) 6 SCC 275 this Court was dealing with a case in which seven persons aged between 14 to 85 were alleged to have been abducted by a senior police officer of the rank of Deputy Superintendent of Police in complicity with other policemen. Since those abducted were not heard of for a considerable period, a complaint was made against their abduction and disappearance before the Director General of Police of the State. It was alleged that the complaint was not brought to the notice of the Director General of Police (Crime). Instead his P.A. had marked the same to the I.G. (Crime) culminating in an independent inquiry through the Superintendent of Police, Special Staff, attached to his office. The report of the Superintendent of Police recommended registration of a case against the officials concerned under Section 364 of the IPC. Despite the said recommendation no case was registered on one pretext or the other against the concerned police officer till 23rd March, 1994. It was at this stage that a writ petition was filed before this Court under Article 32 of the Constitution of India for a fair, independent and effective investigation into the episode. Allowing the petition this Court directed an independent investigation to be conducted by the CBI into the circumstances of the abduction of seven persons; their present whereabouts or the circumstances of their liquidation. An inquiry was also directed into the delay on the part of the State Police in taking action between 25th January 1992 when the complaint was first lodged and 23rd March, 1994 when the case was finally registered.

6. In *R.S. Sodhi Advocate v. State of U.P. and Ors.* 1994 (Supp) (1) SCC 143 this Court was dealing with a petition under Article 32 of the Constitution of India seeking an independent investigation by the CBI into a police encounter resulting in the killing of ten persons. The investigation into the incident was being conducted at the relevant point of time by an officer of the rank of Inspector General level. The State Government also appointed a one-member Commission headed by a sitting Judge of the Allahabad High Court to inquire into the matter. This Court found that since the local police was involved in the alleged encounter an independent investigation by the CBI into what was

according to the petitioner a fake encounter, was perfectly justified. This Court held that, however, faithfully the police may carry out the investigation, the same will lack ‘credibility’ since the allegations against them are serious. Such a transfer was considered necessary so that all those concerned including the relatives of the deceased feel assured that an independent agency was looking into the matter thereby lending credibility to the outcome of the investigation. This Court observed:

“We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book. We direct accordingly. In so ordering we mean no reflection on the credibility of either the local police or the State Government but we have been guided by the larger requirements of justice. The writ petition and the review petition stand disposed of by this order.” (emphasis supplied)

7. A reference may also be made to *State of Punjab v. CBI* (2011) 9 SCC 182 where the High Court of Punjab and Haryana transferred an investigation from the State Police to the CBI in relation to what was known as “Moga Sex Scandal” case. The High Court had while ordering transfer of the investigation found that several police officials, political leaders, advocates, municipal counsellors, besides a number of persons belonging to the general public had been named in connection with the case. The High Court had while commending the investigation conducted by DIG and his team of officials all the same directed transfer of case to CBI having regard to the nature of the case and those allegedly involved in the same. The directions issued by the High Court were affirmed by this Court and the matter allowed to be investigated by the CBI.

8. More recently, this Court in *Advocates Association, Bangalore, v.*

Union of India and Ors. (2013) 10 SCC 611 had an occasion to deal with the question of transfer of an investigation from the State Police to the CBI in the context of an ugly incident involving advocates, police and media persons within the Bangalore City Civil Court Complex. On a complaint filed by the Advocates’ Association, Bangalore, before the Chief Minister for suitable action against the alleged police atrocities committed on the advocates, the Government of Karnataka appointed

the Director General of Police, CID, Special Unit and Economic Offences as an Inquiry Officer to conduct an in-house inquiry into the matter. The Advocates' Association at the same time filed a complaint with jurisdictional police station, naming the policemen involved in the incident. In addition, the Registrar, City Civil Court also lodged a complaint with the police for causing damage to the property of City Civil Court, Bangalore by those indulged in violence. Several writ petitions were then filed before the High Court, inter alia, asking for investigation by the CBI. The High Court constituted a Special Investigation Team (SIT) headed by Dr. R.K. Raghvan, a retired Director CBI, as its Chairman and others. The Advocates' Association was, however, dissatisfied with that order which was assailed before this Court primarily on the ground that a fair investigation could be conducted only by an independent agency like the CBI. Relying upon the decision of this Court in *State of West Bengal v. Committee for Protection of Democratic Rights* (2010) 2 SCC 571 this Court directed transfer of investigation to the CBI holding that the nature of the incident and the delay in setting up of the SIT was sufficient to warrant such a transfer.

9. It is unnecessary to multiply decisions on the subject, for this Court has exercised the power to transfer investigation from the State Police to the CBI in cases where such transfer is considered necessary to discover the truth and to meet the ends of justice or because of the complexity of the issues arising for examination or where the case involves national or international ramifications or where people holding high positions of power and influence or political clout are involved. What is important is that while the power to transfer is exercised sparingly and with utmost care and circumspection this Court has more often than not directed transfer of cases where the fact situations so demand.

10. We are in the case at hand dealing with a major financial scam nicknamed 'Chit Fund Scam' affecting lakhs of depositors across several States in the Eastern parts of this country. Affidavits and status reports filed in these proceedings reveal that several companies were engaged in the business of receiving deposits from the public at large. The modus operandi of the companies involved in such Ponzi Schemes was in no way different from the ordinary except that they appear to have evolved newer and more ingenious ways of tantalizing gullible public to make deposits and thereby fall prey to temptation and the designs of those promoting such companies. For instance Saradha Group of Companies which is a major player in the field, had floated several schemes to allure the depositors to collect from the market a sizeable amount on the promise of the depositors getting attractive rewards and returns. These fraudulent (Ponzi) schemes included land allotment schemes, flat allotment schemes, and tours and travel schemes. The group had floated as many as 160 companies although four out of them were the front runners in this sordid affair. An interim forensic audit report submitted to the SEBI by Sarath & Associate, Chartered Accountants on 27th February, 2014 sums up in the following words, the background in which the schemes are floated and the public defrauded :

“The company M/s Saradha Realty India Ltd. was involved in financial fraud involving in an attempt to deliberately mislead the general public by announcing dubious money multiplier schemes. It has also indulged in misleading the financial status of the group companies by incorrect disclosures in the financial statements in an attempt to deceive financial statement users and regulatory authorities.

The investors lured to extraordinary returns is typically attributed to something that sounds impressive but is intentionally vague, such as hedge fund in land, resorts, tours and travel plans, high yield investment programs.

Typical to the Ponzi schemes the investors who are economically very poor have invested relatively small amounts such as Rs.100 and wait to see if the promised returns are paid. After one month the investor received maturity amounts, so the investor truly believes s/he has earned the promised return. What the investor doesn't realize is that the Rs.100 was a RETURN OF THE INVESTMENT AND NOT A RETURN ON THE INVESTMENT. In other words, the Rs.100 return came from the Rs.100 principal initially invested or from a newly-recruited investor, rather than from any profits generated by the investment opportunity. After a second month yields another Rs.100 payment, the investor is 'hooked' and typically will invest larger amounts in the scheme and will enthusiastically inform friends and family members about this 'fantastic' investment opportunity.

Since these early investors have actually received the promised returns, their promotion of the investment comes across as genuine and instills an almost irresistible urge in friends and family members to invest as well.

If pressed by skeptical investors for more detail, the promoters typically evade answering the question and instead talk about how recently-recruited investors have been receiving the promised returns.

Since little, of the victims' funds are actually invested into a legitimate profit-generating activity, the scheme continued for only as long as the cash inflows to existing investors. However, as the number of investors grown rapidly, the pool of new investors unavoidably shrinks. At one point, the cash flow situation collapsed resulting in four possible outcomes: (1) the investment promoters disappear, taking remaining investment money with them; (2) the scheme collapsed of its own weight, and the promoters have problems paying out the promised returns and, as the word spread, more people start asking for their money creating a run-on-the-bank situation; (3) the investment promoters turn themselves in and confess."

11. The Report suggests that the investors were promised very high returns by way of interest rate ranging from 10% to 18%. The said returns promised to the depositors were, according to the Report, too good to be true. The Report also suggests that a very large number of 'agents base' was created by the companies to extend the reach of these companies. For Saradha Realty India Ltd. itself as many as 2,21,000 agents were working, who were paid an unreasonably high brokerage of 30% of the instrument which became the driving force for the agents to go that extra mile to collect as much as possible. The Report indicates that investments that matured for payment were paid out of the cash collected from new members which was opposed to the normal business norms in which returns ought to be paid out of profits earned in the business. Besides, the cash collections were neither accurately shown in the books of accounts, nor did the bank accounts reveal the details of

such cash collections. The Report states that the company had no real intention of doing any legitimate business activity and the money collected from the public was spread over 160 companies and spent away or siphoned off. No major revenue was seen to be generated by any group company. The companies had opened too many bank accounts for Round Tripping Transactions for the monies collected by them. Apart from as many as 218 branches spread over several States including West Bengal, Odisha, Bihar, Assam and other States the companies had as many as 347 bank accounts in 15 banks in the name of the Group Companies. The bank accounts were opened at the location of branches enabling deposit of the cash into accounts. The daily cash collected less expenses was deposited at branch account and the money pooled and transferred to other accounts as per CMD's instructions and utilized to issue the cheques. The Report also points out violation of the Securities and Exchange Board of India Act, 1992, the Companies Act, 1956, The Reserve Bank of India Act, 1934 and the Income-Tax Act, 1961. It also points out fraudulent certification, non-compliance of accounting standards, material mis- statement of facts and gross negligence on the part of the statutory Auditors. The Interim Report eventually draws up the following conclusions:

“Saradha Reality India Ltd. and its other 3 group companies has collected money from the open market, reaching out to the general public by employing huge number of agents, in form of Investment under different Schemes viz., Fixed Deposits, Monthly Investment Scheme, Recurring Deposits. The SRIL has in pretext of land developers, construction of flats, running tours and travels, travel packages and resorts collected around Rs.2,459 crores over a period of 5 years.

SRIL has no valid registration under the SEBI Act for ‘collective Investment Scheme’ nor has licenced under RBI Act for Nidhi/Chit fund/NBFC. Its MOA also does not permit the company to collect monies in form of deposits. SEBI had passed a winding up order in view of the collection of monies under one of the company’s schemes as Collective Investment scheme on 23/4/2013.

Company management, with fraudulent intent, has designed several investment schemes wherein the depositors invested in expectation of high return. It has also misrepresented its business in writing to income Tax department, SEBI, and to its depositors. The Depositors are promised fixed interest returns but management has promised tours, travel packages, land purchases, flat advances etc. on the receipts which in reality is not intended to be given to the depositors.

The SRIL did not comply with the KYC norms while collecting the deposits, all the deposits are identified by names and addresses, but the ID or address proves are not obtained. The authenticity of the investors is difficult to prove as the deposits are not KYC complied.

The agents are main part of the entire operations of the company, in evolving the new schemes, explaining the public and collecting the deposits. The agents are operated as a tree (chain) and each agent in the chain will get commission on each deposit.

These commissions are paid in priority from the business cash collected (almost 30% of collections) and the balance money is used for meeting company expenses and the rest is either deposited at the bank in the location of the branch or sent to Head Office. The cheques collected are directly deposited in the Bank. Other than Commission the agents are awarded field allowance, prizes, and performance bonuses forming around 30% of the total deposits collected.

SRIL has expanded rapidly its' the business, takeovers in a very short span of five years. The Company has never utilised money so collected from investors for carrying out any legitimate business to earn returns to payback the investors. It has utilized the monies so collected in these takeovers, and venturing into new company for running the loss making businesses like media Channels, newspapers, Magazines, manufacturing automobiles. The group has incorporated 160 companies and the share capital monies, furniture & fixtures, plant and machines, huge staff salaries, fleet of cars on rent, buses, 320 branch premises' rents, daily expenses, maintenance are all met through the deposits collected from the investors.

One of the company – Saradha Exports' ha announced as it is expanding to international by exporting business and opening a branch at Madrid, SPAIN, on its website.

Al the group companies are debt-free companies; the loans standing in the Financial Statements are partly of investors, other group company loans and advances. The Audited Financial Statements are misrepresenting the facts and Statutory Auditor is grossly negligent in discharging his duty to present the true and fair view of the state of affairs of the companies. Most of the group company's Auditor is common.

Since the deposits collected are not utilized for generating income, the monies are spent off and the Company soon has failed to return back the monies to depositors on their maturity. Cash rotation cycle of the depositors broke and has severe cash crunch and let the company to fall off.”

12. The Report estimates the collection made by the Saradha Group of companies at Rs.2459 crores.

13. Failure of the group companies to refund the deposits made with them was bound to as it indeed has led to a public outcry against the scam on account of the huge amount that was collected by these companies by defrauding a very large section of the public majority of whom appear to be from middle class, lower middle class or poorer sections of the society. The Government of West Bengal acted in response to the protests and the public anguish over a fraud of such colossal magnitude and set up a Commission of Inquiry headed by Mr. Justice Shyamal Kumar Sen, retired Chief Justice, Allahabad High Court with four others to be nominated by the Government to inquire into the matters set out in a notification dated 24th April, 2013 issued in that regard. The Commission was empowered to receive all individual and public complaints regarding the Saradha Group of Companies and other similar companies involved in the scam and to forward such complaints to the authorities concerned including the Special Investigation Team for launching prosecution. The Commission was also authorized to send directives to the Special Investigation Team, identify the key persons responsible for the present situation, quantify the estimated amount of money involved

in the alleged transactions, assess the assets and liabilities of the group of companies and to recommend ways and means for providing succor to those who had lost their savings. The Commission was also authorized to recommend remedial action and measures to the State Government so that such situations do not recur.

14. By another notification dated 27th August, 2013 the Government, relying upon the directions issued by the High Court of Calcutta in Writ Petition No.12163(W) of 2013 and Writ Petition No.12197(W) of 2013 empowered the Commission of Inquiry to dispose of all the assets belonging to the Saradha Group of Companies and/or their agents and/or their Benamidars and to adopt an appropriate mode of recovery of debts on behalf of the Saradha Group from its debtors and add the proceeds to the fund to be created for that purpose. The Commission was also clothed with the power to attach the bank accounts belonging to the Saradha Group of Companies and the personal bank accounts of the Directors apart from restraining the banks concerned from allowing anyone to operate such accounts unless authorized by the Commission. Pursuant to the above notifications the Commission has received nearly 18 lakhs complaints and claim petitions demanding refund of the amount deposited under such Ponzi Schemes.

15. In the counter-affidavit filed on behalf of the State of Bihar it is, inter alia, stated that the State Government has announced a sum of rupees 500 crores for payment to the aggrieved depositors apart from money that may be raised from selling off the assets of the companies including the Saradha Group of Companies. The affidavit further states that the Commission has passed orders for payment of compensation to the investors in the Saradha Group of Companies and that over one lakh beneficiaries have been paid while another 1,66,456 identified for such payment. The affidavit also states that as per the directions issued by the High Court of Calcutta in terms of the notification mentioned above as many as 224 immovable properties and 54 vehicles have been identified for attachment and possible sale and recovery of the amount due from the companies. The affidavit goes on to say that one Kunal Kumar Ghosh, Member of Parliament, Rajya Sabha, was arrested on 23rd November, 2013 in connection with the case registered in Bidhannagar South Police Station after being interrogated on several occasions. The said Kunal Kumar Ghosh was the media CEO of Saradha Group of Companies. In addition one Srinjoy Bose, Member of Parliament was also interrogated by serious Fraud Investigation Office in relation to the Saradha Group of Companies and that the Special Investigating Team and the police authorities are extending full support and cooperation to the Central Agencies like Enforcement Directorate, Serious Fraud Investigation Office etc. for effective investigation of the scam. The State has in that view opposed the prayer of the petitioner for transfer of the investigation from the State Police to the CBI.

16. When this case came up before us on 4th March, 2013 our attention was drawn by Mr. C.S. Vaidyanathan, Senior counsel appearing for the State of West Bengal to a statement appearing at page 474 of the said sur-rejoinder filed by the State which according to the learned counsel summarized the investments made by the Saradha group of companies from out of the money collected by it from the depositors. These details were sketchy and unsatisfactory especially when the trail of money collected remained obscure no matter it was one of the important, if not the single most important, angle to be investigated for unraveling facts leading to the scam and identifying those who had aided and/or abetted the same. Mr. Vaidhyathan was, therefore, granted ten days

time to file a comprehensive statement as to the amount collected by the said group of companies and the expenditure incurred/investments made over a period of time.

17. An affidavit was accordingly filed by the State of West Bengal in which the purchase value of the property acquired by Saradha Group of Companies was estimated at Rs.40 crores only as against a total collection of Rs.2,460 crores made by the said companies. Mr. Vaidyanathan argued that the investment in real estate could go upto Rs.110 crores on the basis of the information gathered from the software that was seized from the companies concerned. Even if that were so a significant discrepancy existed between investigation based estimated purchase value of the properties on the one hand and what could according to Mr. Vaidyanathan emerge from the software seized from the companies. Mr. Vaidyanathan argued that the discrepancy could be on account of the fact that a large number of properties referred to in the affidavit have been acquired by the companies on the basis of power of attorneys which do not indicate the value of the property covered by such deeds and transactions. Be that as it may, a huge gap between the amount collected and the investments made in real estate itself calls for effective investigation as to the trail of money collected by the group of companies. Investigation by the State Police has not unfortunately made any significant headway in this regard.

18. More importantly, the question whether the scam was confined only to those who actively managed and participated in the affairs of the companies or the same flourished on account of the support and patronage of others is an issue that has bothered us all through the hearing of this case. We had, therefore, directed the State to file a sample copy of the chargesheets said to have been submitted before the jurisdictional Courts. A perusal of the copies so furnished shows that the same relate only to individual deposits leaving untouched the larger conspiracy angle that needs to be addressed. It was argued by Mr. Bhattacharya that the Investigating Agency was deliberately avoiding to investigate that vital aspect. Mr. Vaidyanathan, however, contended that the larger conspiracy angle was being investigated separately in an FIR registered with Vidhannagar Police Station. He sought and was given time to file an affidavit setting out the particulars of the FIR in which the larger conspiracy angle was being examined and the progress so far made in that regard.

19. An additional affidavit was accordingly filed by Mr. Vaidyanathan in which it is, inter alia, stated that the larger conspiracy angle is being investigated in Crime No.102 registered in Bidhannagar Police Station (North) on 6th May, 2013 under Sections 406, 409, 420, 120B IPC. At the hearing of the case on 9th April, 2014 Mr. Vaidyanathan passed on to us a sealed cover containing a list of persons who according to the learned counsel need to be questioned in view of the disclosures made and the evidence collected so far by the Investigating Agency. The basis on which the Investigation Team has named the persons in the list was not set out in the list or elsewhere. Mr. Vaidyanathan, therefore, offered to file a synopsis of the evidence on the basis whereof the names mentioned in the list had been included in the said list and the evidence which incriminates them calling for further investigation into their role and conduct. An affidavit giving the synopsis was pursuant to the said order filed by Mr. Vaidyanathan indicating briefly the basis on which the persons named in the list were sought to be interrogated in connection with the scam. A perusal of the synopsis furnished and the names included in the list makes it abundantly clear to us that several important individuals wielding considerable influence within the system at the State and the national level have been

identified by the Investigating Agency for interrogation. We do not consider it necessary to reveal at this stage the names of the individuals who are included in the list on the basis of which the Investigating Agency proposes to interrogate them or the material so far collected to justify such interrogation. All that we need point out is that investigation into the scam is not confined to those directly involved in the affairs of companies but may extend to several others who need to be questioned about their role in the sequence and unfolding of events that has caused ripples on several fronts.

20. There is yet another aspect to which we must advert at this stage. This relates to the role of the Regulatory Authorities. Investigation conducted so far puts a question mark on the role of regulatory authorities like SEBI, Registrar of Companies and officials of the RBI within whose respective jurisdictions and areas of operation the scam not only took birth but flourished unhindered. The synopsis filed by Mr. Vaidyanathan names some of the officials belonging to these authorities and give reasons why their role needs to be investigated. The synopsis goes to the extent of suggesting that regular payments towards bribe were paid through middleman to some of those who were supposed to keep an eye on such ponzi companies. The Regulatory Authorities, it is common ground, exercise their powers and jurisdiction under Central legislations. Possible connivance of those who were charged with the duty of preventing the scams of such nature in breach of the law, therefore, needs to be closely examined and effectively dealt with. Investigation into the larger conspiracy angle will, thus, inevitably bring such statutory regulators also under scrutiny.

21. It was at one stage argued on behalf of SEBI that companies involved in the scam were doing chit-fund business and since chit-funds were not within its jurisdiction it could not have taken cognizance of the same. Our attention was, however, drawn to atleast two orders passed by SEBI directing winding up of such ponzi schemes and refund of the amounts received by the companies concerned to the depositors. It was submitted by learned Counsel for the petitioner that the SEBI having examined the issue, taken cognizance of the violation, no matter belatedly and issued directions for winding up of the schemes and refund of the amount, it was no longer open to it to argue that it had no role to play in the matter.

22. We are not in these proceedings required to authoritatively pronounce upon the question whether SEBI had the jurisdiction to act in the matter. What is important is that if upon investigation it is found that SEBI did have the jurisdiction to act in the matter but failed to do so then such failure may tantamount to connivance and call for action against those who failed to act diligently in the matter. Suffice it to say, that the scam of this magnitude going on for years unnoticed and unchecked, is suggestive of a deep rooted apathy if not criminal neglect on the part of the regulators who ought to do everything necessary to prevent such fraud and public loot. Depending upon whether the investigation reveals any criminal conspiracy among those promoting the companies that flourished at the cost of the common man and those who were supposed to prevent such fraud calls for a comprehensive investigation not only to bring those who were responsible to book but also to prevent recurrence of such scams in future.

23. There is yet another dimension of the scam which cannot be neglected. That the ponzi companies operated across State borders is evident not only from the pleadings on record but also from the submissions urged in the course of the arguments before us. What is significant is that these companies and such other similar companies indulged in similar fraudulent activities in the State of Assam and Tripura also apart from Orissa where the depositors have suffered. Looking to the nature of the scam and its inter- State ramifications, cases registered in the State of Tripura have since been transferred to the CBI for investigation at the request of the State Government. A similar request has been made by the Government of Assam which has, according to Mr. Siddharth Luthra, learned Additional Solicitor General, been accepted by the Central Government who is shortly issuing a notification under which cases concerning the scam registered in the State of Assam shall stand transferred to the CBI.

24. That leaves us with the State of Odisha where too Saradha Group of Companies and a host of similar other companies appear to have indulged in similar activities giving rise to considerable public resentment against the authorities for not preventing such companies from defrauding the innocent public. Writ Petition (C) Nos.413 of 2013 and 324 of 2014 seek transfer of such cases registered in the State of Odisha to the CBI on the analogy of what was done in relation to Tripura and Assam keeping in view the magnitude of the scam as also those involved, in the same.

25. In Writ Petition (C) No.413 of 2013 we had by our order dated 26th March, 2014 confined the proceedings to 44 companies mentioned in two list one filed by Mr. Alok Jena, the petitioner in the petition and the other by the Counsel for the State Government. The involvement of these companies in the scam had inter-state ramifications besides the fact that their collections had exceeded over 500 cores each.

26. It was submitted by counsel for the parties that looking to the large number of cases that had been registered, transfer of each and every case may work as an impediment in the effective investigation of the cases by the CBI. For all intents and purposes, therefore, proceedings in these two writ petitions were confined to a prayer for transfer of cases registered against 44 companies named in the lists filed by the counsel for the parties.

27. Since certain aspects of the information considered relevant for the transfer of the cases was not forthcoming, we had directed the State Government to file an affidavit providing the said information. The information related primarily to the number of companies involved in the scam in the State of Odisha. The total amount allegedly collected by 44 companies referred to in the lists furnished by the State Counsel and Counsel for the petitioner. The total number of claims made by the depositors before Justice R.K. Patra Commission set up with the State Government as also the total number of properties, seized in regard to the 44 companies referred to above. The total amount so far paid to the investors under the orders or the Commission or otherwise and the total number of charge-sheets so far filed. Investments made in real estate or otherwise by the 44 companies were also demanded from the State who was asked to disclose whether the larger conspiracy angle was being investigated and, if so, furnish the particulars of the FIR in which that was being done.

28. An affidavit has been filed by the State of Odisha pursuant to the said directions in which the FIRs where the State Investigating Agency is examining the larger conspiracy angle, have been identified. A perusal of the Affidavit, further, shows that 163 companies were involved in the chit-fund scam in the State of Odisha who have collected Rs.4565 crores approximately from the public out of which a sum of Rs.2904 crores has been collected by 43 companies mentioned in the list referred to earlier excluding M/s Nabadiganta Capital Services Ltd. against which no criminal case have been registered so far. The affidavit also states that 7,45,293 envelopes containing claim petitions have been received from the depositors by Justice R.K. Patra Commission. The affidavit also gives details of the properties of the companies seized/sealed in the course of the on-going investigation. The affidavit also refers to payment of Rs.24,17,65,866/- allegedly made to 18,596 investors by M/s Prayag Infotech High Rise Limited, Kolkata and the willingness expressed by M/s Rose Valley Hotels and Entertainment Limited to pay back the investors. Larger conspiracy angle is according to the affidavit being examined in three cases. These are (i) CID PS Case No.39 dated 18.07.2012 under Section 420/120-B IPC read with Sections 4, 5 and 6 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978 registered against M/s Seashore Group of Companies,

(ii) Case No.44 dated 07.02.2013 under the same provisions registered in Kharavelnagar Police Station (Bhubaneswar Urban Police District) against M/s Artha Tatwa Group of Companies and (iii) EOW PS Case No.19 dated 06.06.2013 registered against M/s Astha International Ltd. It was submitted that while charge sheets have been submitted in three cases mentioned above within the period of limitation, investigation has been kept open under Section 173 (8) of the Cr.P.C. to investigate the larger conspiracy angle. The affidavit also refers to certain legislations enacted in the State of Odisha to protect the interest of depositors. It also refers to certain interim orders passed by the Government for attachment of the properties of the defaulting companies.

29. Appearing for the State of Odisha, Mr. Gopal Subramaniam, learned Senior Counsel argued that while this Court may transfer for further investigation into the cases registered against 44 companies referred to above, any such transfer should not hamper the attachment or recovery process otherwise initiated by the State in terms of the measures taken by it. It was also contended by Mr. Subramaniam that public prosecutors appointed by the CBI would be assisted by the State Police Officials so that the efficacy of the investigation and prosecution are both taken care of by the joint efforts that the Central and the State police authorities may make.

30. The factual narrative given in the foregoing paragraphs clearly establish the following:

1. That financial scam nicknamed chit-fund scam that has hit the States of West Bengal, Tripura, Assam and Odisha involves collection of nearly 10,000 crores (approx.) from the general public especially the weaker sections of the society which have fallen prey to the temptations of handsome returns on such deposits extended by the companies involved in the scam.
2. That investigation so far conducted suggests that the collection of money from the depositors was neither legally permissible nor were such collections/deposits invested in any meaningful business activity that could generate the high

returns/promised to the depositors.

3. That more than 25 lac claims have so far been received by the Commissions of Enquiries set up in the States of Odisha and West Bengal which is indicative of the magnitude of scam in terms of number of citizens that have been defrauded by the ponzi companies.

4. That the companies indulge in ponzi schemes have their tentacles in different States giving the scam inter-state ramifications. That such huge collections could have international money laundering dimensions cannot be ruled out and needs to be effectively investigated.

5. That Investigation so far conducted reveals involvement of several political and other influential personalities wielding considerable clout and influence.

6. That the role of regulators like SEBI, authorities under the Companies Act and the Reserve Bank of India is also under investigation by the State Police Agency which may have to be taken to its logical conclusion by an effective and independent investigation.

31. The question is whether the above features call for transfer of the ongoing investigation from the State Police to the CBI. Our answer is in the affirmative. Each one of the aspects set out above in our view calls for investigation by an independent agency like the Central Bureau of Investigation (CBI). That is because apart from the sensitivity of the issues involved especially inter-state ramifications of the scam under investigation, transfer of cases from the State police have been ordered by this Court also with a view to ensure credibility of such investigation in the public perception. Transfers have been ordered by this Court even in cases where the family members of victim killed in a firing incident had expressed apprehensions about the fairness of the investigation and prayed for entrusting the matter to a credible and effective agency like the CBI. Investigation by the State Police in a scam that involves thousands of crores collected from the public allegedly because of the patronage of people occupying high positions in the system will hardly carry conviction especially when even the regulators who were expected to prevent or check such a scam appear to have turned a blind eye to what was going on. The State Police Agency has done well in making seizures, in registering cases, in completing investigation in most of the cases and filing charge-sheets and bringing those who are responsible to book. The question, however, is not whether the State police has faltered. The question is whether what is done by the State police is sufficient to inspire confidence of those who are aggrieved. While we do not consider it necessary to go into the question whether the State police have done all that it ought to have done, we need to point out that money trail has not yet been traced. The collections made from the public far exceed the visible investment that the investigating agencies have till now identified. So also the larger conspiracy angle in the States of Assam, Odisha and West Bengal although under investigation has not made much headway partly because of the inter- state ramifications, which the Investigating Agencies need to examine but are handicapped in examining.

32. M/s Vaidyanathan and Gopal Subramaniam, learned counsel for the States of West Bengal and Odisha respectively argued that the CBI itself has in a great measure lost its credibility and is no longer as effective and independent as it may have been in the past. Similar sentiments were expressed by Mr. P.V. Shetty appearing on behalf of some of the investors and some other intervenors, who followed suit to pursue a similar line of argument.

33. There is, in our opinion, no basis of the apprehension expressed by the State Governments. It is true that a lot can be said about the independence of CBI as a premier Investigating Agency but so long as there is nothing substantial affecting its credibility it remains a premier Investigating Agency. Those not satisfied with the performance of the State Police more often than not demand investigation by the CBI for it inspires their confidence. We cannot, therefore, decline transfer of the cases only because of certain stray observations or misplaced apprehensions expressed by those connected with the scam or those likely to be affected by the investigation. We may in this regard gainfully extract the following passage from the decision of this Court in *Sanjiv Kumar v. State of Haryana and Others* (2005) 5 SCC 517, where this Court has lauded the CBI as an independent agency that is not only capable of but actually shows results:

“15. In the peculiar facts and circumstances of the case, looking at the nature of the allegations made and the mighty people who are alleged to be involved, we are of the opinion, that the better option of the two is to entrust the matter to investigation by CBI. We are well aware, as was also told to us during the course of hearing, that the hands of CBI are full and the present one would be an additional load on their head to carry. Yet, the fact remains that CBI as a Central investigating agency enjoys independence and confidence of the people. It can fix its priorities and programme the progress of investigation suitably so as to see that any inevitable delay does not prejudice the investigation of the present case. They can think of acting fast for the purpose of collecting such vital evidence, oral and documentary, which runs the risk of being obliterated by lapse of time. The rest can afford to wait for a while. We hope that the investigation would be entrusted by the Director, CBI to an officer of unquestioned independence and then monitored so as to reach a successful conclusion; the truth is discovered and the guilty dragged into the net of law. Little people of this country, have high hopes from CBI, the prime investigating agency which works and gives results. We hope and trust the sentinels in CBI would justify the confidence of the people and this Court reposed in them.”

34. In the circumstances, we are inclined to allow all these petitions and direct transfer of the following cases registered in different police stations in the State of West Bengal and Odisha from the State Police Agency to the Central Bureau of Investigation (CBI):

A. State of West Bengal:

1. All cases registered in different police stations of the State against Saradha Group of Companies including Crime No.102 registered in the Bidhannagar Police Station, Kolkata (North) on 6th May, 2013 for offences punishable under Sections 406, 409,

420 and 120B of the IPC.

2. All cases in which the investigation is yet to be completed registered against any other company upto the date of this order.

3. The CBI shall be free to conduct further investigation in terms of Section 173 (8) of the Cr.P.C. in relation to any case where a charge-sheet has already been presented before the jurisdictional court against the companies involved in any chit-fund scam.

B. State of Odisha :

All cases registered against 44 companies mentioned in our order dated 26th March, 2014 passed in Writ Petition (C) No.413 of 2013. The CBI is also permitted to conduct further investigations into all such cases in which chargesheets have already been filed.

35. We reserve liberty for the Joint Director CBI, Incharge of the States of West Bengal and Odisha to seek further directions in relation to transfer of any other case or cases that may require to be transferred for investigation to CBI for a full and effective investigation into the scam.

36. Transfer of investigation to the Central Bureau of Investigation (CBI) in terms of this order shall not, however, affect the proceedings pending before the Commissions of Enquiry established by the State Government or stall any action that is legally permissible for recovery of the amount for payment to the depositors. Needless to say that the State Police Agencies currently investigating the cases shall provide the fullest cooperation to the CBI including assistance in terms of men and material to enable the latter to conduct and complete the investigation expeditiously.

37. The Enforcement Directorate shall, in the meantime, expedite the investigation initiated by it into the scam and institute appropriate proceedings based on the same in accordance with law.

38. We make it clear that nothing said in this order, shall be taken as a final opinion as to the complicity of those being investigated or others who may be investigated, questioned or interrogated in relation to the scam.

39. We do not for the present consider it necessary to constitute a Monitoring Team to monitor the progress of the investigation into the scam. But, we leave the exercise of that option open for the future.

40. The Writ Petitions and T.P.(C) No. 445 of 2014 are disposed of in terms of the above directions. No costs.

.....J.
(T.S. THAKUR)

New Delhi,
May 9, 2014

(C. NAGAPPAN)

.....J.