IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.879 of 2018

Arising Out of PS. Case No.-2 Year-2018 Thana- C.B.I CASE District- Patna

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Kanwal Tanuj, Son of Sri Artiman Tripathi, Resident of SP-24, Chetan Vihar, Sector- C, P.S.- Aliganj, Town and District- Lucknow (U.P.)

... ... Petitioner/s

Versus

1. The State of Bihar, Through The Chief Secretary, Government of Bihar, Main Secretariat, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Main Secretariat, Patna.
3. The Principal Secretary, Home Department, Government of Bihar, Main Secretariat, Patna.
4. The Principal Secretary, Department of Revenue & Land Reforms, Government of Bihar, Main Secretariat, Patna.
5. The Director, Central Bureau of Investigation, CBI Head Quarters, CGO Complex, Lodi Road, New Delhi.
6. The Superintendent of Police, CBI, Anti Corruption-I, Unit-II, New Delhi.
7. Sri Pramod Kumar, Deputy Superintendent of Police, CBI, A.C.-I, New Delhi.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P. K. Shahi, Sr. Advocate
		Mr. Y.S. Lohit, Advocate
		Mr. Ranjan Kumar Srivastava, Advocate
		Mr. Raj Nandan Prasad, Advocate
For the Respondent/s	:	Mr. Suman Kumar Jha, AC to AAG3
For C.B.I.	:	Mr. Raghavacharyulu, Sr. Advocate
		Mr. Bipin Kumar Sinha, SC
		Mr. Sanjay Kumar, SC

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date : 17-09-2018

The extra-ordinary writ jurisdiction of this Court has been invoked by the petitioner who is a member of the Indian Administrative Service (in short I.A.S.) for the following reliefs:

"(i) For quashing the FIR bearing R.C. A.C.-I, 2018A 0002 dt. 21.02.2018 giving rise to Special Case no. 01/18 / 02/18 lodged at C.B.I., AC-I, New Delhi under Sections 120 B, 420, 467, 468 and 471 of the Indian Penal Code read with

Section 13 (1) (d) of the Prevention of Corruption Act, pending in the court of Special Judge-III, AHD, Patna as the allegations made in the F.I.R. does not discloses any criminal offence;

(ii) For declaration that the present F.I.R. which has been lodged against the petitioner being a Government Servant in Bihar without permission of the State Government is in violation of Section 6 of the Delhi Special Police Establishment Act (hereinafter referred to as the D.S.P.E. Act) and as such wholly without jurisdiction being void ab initio and hence, liable to be quashed and as such no investigation could be proceeded;

(iii) For restraining the respondents from taking any coercive measure against the petitioner; and/or for any other relief(s) to which the petitioner may be found entitled to in the facts and circumstances of the present case."

Brief Facts of the Case

2. The allegations contained in Annexure- 'A' to the F.I.R. are briefly stated as under:-

(i) The petitioner during his tenure as District Magistrate, Aurangabad has allegedly connived with the Chief Executive Officer of Bhartiya Rail Bijli Company Ltd. (in short hereinafter referred to as B.R.B.C.L.), Nabinagar and other unknown officers/officials of the B.R.B.C.L., local district administration and one Sri Gopal Prasad Singh (now deceased). It is alleged that in furtherance of the criminal conspiracy this petitioner got false document of Khata No. 12, Plot No. 1 of *Mauja* Karjain prepared in respect of one Sri Gopal Prasad Singh son of Late Keshav Prasad Singh, resident of Nabinagar, District Aurangabad (Bihar). Some false receipts of *Lagan* for the period 1988-89 to 2016-17 and some other related papers, returns of the above land shown to have been purchased from Sri Mukund Lal (Jamindar), who was never a Jamindar (Landlord) of the area were prepared and submitted to claim compensation in the name of Sri Gopal Prasad Singh.

(ii) It is further alleged that this petitioner fraudulently directed that 7.45 acres land in Khata No. 12, Plot No. 1 of *Mauja* Karjain be recorded in the name of Sri Gopal Prasad Singh, (now deceased) and the matter may be further processed accordingly. Circle Officer, Nabinagar sent a Letter No. 74 dated 11.03.2017 to the Chief Executive Officer, B.R.B.C.L. for purchasing of the land from the owner Sri Gopal Prasad Singh. The Circle Officer, Nabinagar, thereafter issued another letter dated 25.03.2017 to B.R.B.C.L. recalling his previous letter dated 22.06.2015 and informed that 7.45 acres, out of the total land in Khata No. 12, Plot No. 1 of *Mauja* Karjain has been registered in the name of Sri Gopal Prasad Singh. The Circle Officer further informed B.R.B.C.L. that 6.545 acres falling in the Ashdyke area in the above mentioned plot was being earmarked/acquired for the B.R.B.C.L. and directed the B.R.B.C.L. to purchase the said land from the owner Sri Gopal Prasad Singh and 0.905 acres of the government land was being transferred to B.R.B.C.L. for the purpose of the plant.

(iii) The allegation is that as per procedure, when B.R.B.C.L. officials along with other officers visited the site on 12.04.2017 for taking possession of the aforesaid land, the claimant Gopal Prasad Singh allegedly could not identify his own land and many villagers who gathered there opposed that the said land was not owned by Sri Gopal Prasad Singh. In this regard video C.D. was also prepared at the spot. In furtherance of the conspiracy, vide letter no. 17070 dated 26.05.2017 this petitioner directed B.R.B.C.L. to make payment of compensation for the land to Gopal Prasad Singh within 48 hours. Vide Letter No. 151 dated 12.06.2017 Sri C. Shiv Kumar, C.E.O. B.R.B.C.L. made payment of Rs. 2,07,84,583/- to Gopal Prasad Singh (now deceased) despite having knowledge that Sri Gopal Prasad Singh could not identify the land and many villagers who had gathered there opposed saying that the said land was not owned by Sri Gopal Prasad Singh.

(iv) It is further alleged that an account payee cheque no. 382774 dated 29.05.2017 for Rs. 2,07,84,583/- was issued from Account No. 30450307785 by B.R.B.C.L. in favour of Sri Gopal Prasad Singh and the same was credited in the account of Gopal Prasad Singh maintained in SBI, Nabinagar Branch. This amount was transferred by RTGS/SBINR520170529 in this account and subsequently the money was withdrawn. The allegation is that the information received by the C.B.I. revealed that large scale corruption and siphoning of government funds has taken place in the land acquisition for the plant of B.R.B.C.L. by the B.R.B.C.L. officials in criminal conspiracy with the local district administration. The case of Gopal Prasad Singh was cited as a specific instance by the source of information. It is, thus, alleged that B.R.B.C.L. was caused wrongful loss to the tune of Rs. 2,07,84,583/- and corresponding wrongful gain to themselves. On finding that the facts and circumstances brought to the notice of the C.B.I. *prima-facie* disclose commission of offence punishable under Section 120-B, 420, 467, 468 and 471 of the Indian Penal Code read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, the present F.I.R. has been lodged against Sri C. Shiv. Kumar, C.E.O., B.R.B.C.L., Nabinagar, Sri Kanwal Tanuj, District Magistrate, Aurangabad (petitioner) and other unknown/servants of B.R.B.C.L. and local district administration and other private persons.

3. It is admitted position that after lodging of the first information report, the C.B.I. conducted a raid in the residential premises of the petitioner, certain documents have been seized from the residential house of the petitioner and the investigation in the matter is still going on.

Submission of the petitioner

4. Mr. P. K. Sahi, learned Senior Counsel assisted by Mr. Y. S. Lohit, learned counsel representing the petitioner submits that the institution of F.I.R. against the petitioner is wholly without jurisdiction and void ab initio as by not taking prior consent from the State Government, the C.B.I. has violated the mandatory statutory bar of proviso to the notification dated 19.02.1996 issued by the State Government in view of the provisions contained under Section 6 of the D.S.P.E. Act. It is submitted that in terms of the proviso to the notification dated 19.02.1996, if offences are covered under para (a)(i) to (iii) and (b) of the notification dated 19.02.1996, the C.B.I. is obliged to obtain State Government's consent for investigating cases against the public servant employed in connection with the affairs of the State Government.

5. It is submitted that Section 6 of the D.S.P.E. Act, 1946 has been incorporated only to maintain the federal structure of the nation and it is also in consonance with the policing affairs of the State being a State subject under Entry No. 2 in list II of the Schedule 7 to the Constitution of India.

6. Learned Senior Counsel submits that in the present case the C.B.I. has registered the first information report without holding any preliminary inquiry. It is submitted that C.B.I. has violated Para 1.10.2 (b) and Para 17.4 (b) of Chapter 17 of C.B.I. Manual. Referring to the aforesaid paragraph from C.B.I. Manual, learned senior counsel submits that the cases which are essentially and substantially against the State Government employee or are in respect of the matters concerning the State Government shall be investigated by the State police irrespective of the fact that certain employees of the Central Government are involved as accused. If one of the accused is the Chief Executive Officer of the B.R.B.C.L., which is a government company owned or controlled by N.T.P.C., the C.B.I. cannot assume jurisdiction even over B.R.B.C.L. which is a separate juristic entity situated in the State of Bihar and is not owned or controlled by the Central Government.

7. The submission is that the notification dated 19.02.1996 cannot be taken as a general consent of the government of Bihar and C.B.I. would have no jurisdiction to investigate the public servant who are engaged in connection with the affairs of the Government of Bihar, since the petitioner is presently serving in connection with the affairs of the Government of Bihar, unless and until the Government of Bihar gives a consent as envisaged under Section 6 of the D.S.P.E. Act, the C.B.I. cannot proceed with the investigation.

8. Learned Senior Counsel submits that the counter affidavit filed on behalf of the State Revenue Department of the Government of Bihar also indicates that the C.B.I. has not sought any consent from the State Government. It is submitted on behalf of the petitioner that the C.B.I. sought no report from the State Revenue Department to ascertain the veracity of the allegations made against the petitioner and only on the basis of assumption against the title of the land, at the behest of the vested interest, present F.I.R. has been lodged with sole motive to harass an honest person discharging his official duty as a statutory authority. It is submitted that the C.B.I. did not explain the inordinate delay in lodging of the F.I.R., the agency has acted in excess and is indulged in an abuse of powers. The F.I.R. has been lodged at New Delhi at more than 1,000 Km. from Aurangabad, Bihar where the petitioner passed quasi-judicial order in March and May 2017 as Collector *i.e.* competent authority designated by the State Government. It is submitted that the order was passed by the Collector pursuant to the resolution vide Memo No. 925 dated 11.11.2014 and further it would appear from Annexure-4 to the writ application that the learned writ court while hearing C.W.J.C. No. 14314 of 2009 issued direction in case of the petitioners of the said case wherein the land acquisition officer was directed to examine the claim of the petitioners as regards the ownership of the land and if the Land Acquisition Officer is satisfied by perusing the title documents that the petitioners are the owner of the lands detailed in paragraph 10 of the petition which has been acquired for the purpose of Thermal Power Project, Nabinagar then petitioners be paid compensation in terms of the provisions of the Act as early as possible, in any case, within a reasonable time not exceeding three months from the date of filing of the application. It is further submitted that the petitioner passed the orders only after seeking clarification from the Government of

Bihar which will be evident from the notification dated 30.1.2015 as contained in Annexure- ‘8’ to the writ application. According to the same, it is only the Collector who will take decision for claims of Riyats in *Gair Mazrua Malic/Khas* as per guidelines in G.O. dated 04.04.2011.

9. It is also pointed out that Annexure-3 to the writ application is an inquiry report vide letter no. 706 dated 29.04.2016, submitted by the Commissioner, Magadh Division, Gaya, who has earlier found that certain allegations level against the petitioner in the letter of the Parliamentarian Sushil Kumar Singh in the notice of privilege motion have been purposely made because of anguish on the part of the Parliamentarian. It is further submitted that the inquiry report as contained in Annexure- ‘3’ is with regard to the said matter.

10. Learned Senior Counsel representing the petitioner submits that the petitioner has acted in terms of the policy of *Raiyatikaran* of *Gair Mazrua* land as per G.O. dated 04.04.2011 of the Department of Revenue and Land Reforms, Government of Bihar and explanation in its Clause “Ga” of Para-10 and has ensured payment of compensation accordingly to such *Raiyats*. The order passed by the petitioner has not been set aside, reversed or modified by the appellate authority or any court and C.B.I. has placed no document to show that the land did not belong to the said *Raiyat*, therefore, by passing the orders the petitioner has not committed any offence. It is submitted that the allegations of making payment of Rs. 2 crore and thereby causing loss to the B.R.B.C.L. has been made only to malign the image of the petitioner. Such payment was made by the B.R.B.C.L. to *Raiyat* only after taking possession of the land. It is submitted that there was no meeting of minds between the petitioner and B.R.B.C.L. The C.B.I. is not supposed to contest a title of *Raiyat* of said piece of land as it had no positive material about the ownership.

11. Learned Senior Counsel representing the petitioner has further submitted that the consent of the State Government as envisaged in Section 6 of the D.S.P.E. Act is a significant Act. In the case of **J.N. Sahai and others vs. State of Bihar** reported in **1982 Cr.L.J. 410** a Division Bench of this Hon'ble Court held that "Two or more persons are said to consent when they agree upon the same thing in same sense, it has to be tested with reference to the documents themselves as the agreement between the parties must be upon the same thing in the same sense." It is submitted that in view of above as also in view of the mandatory provisions of Section 6 of D.S.P.E. Act and proviso to the notification dated 19.02.1996, instead of relying upon "Assumed consent" by willful misinterpretation of said notification, the C.B.I. was statutorily and legally bound to seek consent for lodging F.I.R. or for investigating State officials. On behalf of the petitioner a number of judgments have been referred to demonstrate how a particular 'proviso' is to be read and interpreted.

12. Learned senior counsel has relied upon a judgment of Hon'ble Supreme Court in the case of **S. Sundaram Pillai And Others Versus V.R. Pattabiraman And Others** reported in **(1985) 1 SCC 591** (para 27) and on the judgment in the case of **The Commissioner of Income Tax Vs. The Indo Mercantile Bank** reported in **AIR 1959 SC 713**. The observations of the Hon'ble Supreme Court in paragraph-33, 38, 39, 40, 42 and 43 in the case of **S. Sundaram Pillai** (supra) have been referred and relied upon. Learned senior counsel has also referred paragraph-10 and 12 of the judgment of the Hon'ble Apex Court in the case of **Ali M.K. & Ors. Vs. State of Kerala & Ors.** reported in **(2003) 11 SCC 632.** It is submitted that the proviso in the notification dated 19.02.1996 is in the nature of qualification of the preceeding part of the notification. It creates an exception to what is stated in the first part of the notification dated 19.02.1996.

13. In order to strengthen his argument that B.R.B.C.L. cannot be said to be a company owned or controlled by the Central Government and therefore, will not fell even in the first part of the notification dated 19.02.1996, learned Senior Counsel has drawn the attention of this Court towards the relevant paragraphs of the Memorandum of Association (in short 'MOA') and Articles of Associations (in short 'AOA') of B.R.B.C.L. It is submitted that Article 65 to 70 deals with the borrowing powers, Article 109 provides that C.E.O. is to be nominated by the N.T.P.C. who works under the control and supervision of the Board of Directors. Under Article 137 and 138 the powers of Board have been provided which are subject to the provisions of the Companies Act and the 'MOA' and 'AOA'. It is submitted that from the provisions contained in the 'MOA' and 'AOA' of the B.R.B.C.L., it would be evident that it does not fall in the category of a company owned or controlled by the Central Government.

14. Learned senior counsel submits that every company has a distinct entity and its status is different from the status of it's share holders, referring to the judgment of the Hon'ble Supreme Court in the case of **State Trading**

Corporation Ltd. & Others Vs. The Commercial Tax Officer, Vishakhapatnam & Ors. reported in **AIR 1963 SC 1811**, learned Senior Counsel submits that when a question fell for consideration as to "Whether the State Trading Corporation is, not with standing the formality of incorporation under the Indian Companies Act, 1956, in substance a department and organ of the Government of India with the entirety of its capital contributed by Government and can it claim to enforce fundamental rights under Part-III of the Constitution of India against the State as defined in Article 12 thereof ?" Hon'ble Apex Court held "Unlike an unincorporated company, which has no separate existence and which the law does not distinguish from its members, an incorporated company has a separate existence and the law recognises it as a legal person separate and distinct from its members. This new legal personality emerges from the moment of incorporation and from that date the persons subscribing to the Memorandum of Association and other persons Joining as members are regarded as a body corporate or a corporation aggregate and the new person begins to function as an entity. But the members who form the incorporated company do not pool their status or their personality. If all of them are citizens of India the company does not become a citizens of India any more than if all are married the company would be a married person. The personality of the members has little to do with the persona of the incorporated company. The persona that comes into being is not the aggregate of the personae either in law or in metaphor."

15. Learned Senior Counsel has further relied upon the judgment of the Hon'ble Supreme Court in case of **A. K. Bindal And Another Vs. Union of India and Ors.** reported in **(2003) 5 SCC 163.** Paragraph-17 of the judgment has been relied upon for the same purpose as has been held hereinabove. Referring to the judgment in the case of **State of U.P. and another vs. UPTRON Employees' Union CMD-1 & others** reported in **(2006) 5 SCC 319,** learned Senior Counsel submits that the Hon'ble Supreme Court has held in the case of **UPTRON Employees** (supra) that "even if it be a subsidiary of a government company, there is no legal obligation cast upon the State Govt. to pay the wages due to the workmen. The rights of workmen are governed by the relevant provisions of the Companies Act where their claim has been accorded priority." In the case of **State of H.P. & Ors Vs. Rajesh Chander Sood Etc.** passed in **Civil Appeal No. 9750-9819 of 2016,** a similar view has been taken. Learned Senior Counsel has referred the judgment of the

Hon'ble Apex Court in the case of **Rustom Cavasjee Cooper Vs. Union of India** reported in **1970 (1) SCC 248** (popularly known as Banks Nationalization case). In Paragraph 11 of the said judgment the Hon'ble Apex Court held that "A company registered under the Companies Act is a legal person, separate, and distinct from its individual members. Property of the Company is not the property of the shareholders. A shareholder has merely an interest in the Company arising under its Articles of Association, measured by a sum of money for the purpose of liability, and by a share in the distributed profit. Again a director of a Company is merely its agent for the purpose of management. The holder of a deposit account in a Company is its creditor : he is not the owner of any specific fund lying with the Company."

16. Further referring to the judgment of the Hon'ble Apex Court in the case of **SS Rana Vs. Registrar, Co-Operative Societies & Anr** reported in **(2006) 11 SCC 634**, learned Senior Counsel relied upon Paragraph 12 of the judgment wherein it has been held "It is well settled that general regulations under an Act, like the Companies Act or the Co-operative Societies Act, would not render the activities of a company or a society as subject to control of State. Such control in terms of the provisions of the Act are meant to ensure proper functioning of the Society and the State or statutory authorities would have nothing to do with its day-to-day functions." In the case of **Tata Engineering & Locomotive Vs. State of Bihar & others** reported in **AIR 1965 SC 40**, in Paragraph 24 the Hon'ble Apex Court held that "the corporation in law is equal to a natural person and has a legal entity of its own. The entity of the Corporation is entirely separate from that of its shareholders; it bears its own name and has a seal of its own; its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purpose; its creditors cannot obtain satisfaction from the assets of its members; the (liability of the members or shareholders is limited to the capital invested by them, similarly the creditors of the members have no right to the assets of the corporation." This position is well settled ever since the decision in **Saloman v. Salomon & Co.** reported in **1897 AC 22.** It is submitted that in course of time the doctrine that a corporation or a company has legal and separate entity of its own was subjected to certain exceptions by application of fiction that veil can be lifted, as a result of impact of complexity of economic factors, judicial decisions sometimes recognized exceptions to rule about juristic personality of the corporation. It is submitted that in the case of **Western Coalfields Ltd. Vs. Special Area Development Authority, Korba & Anr.** Reported in **(1982) 1 SCC 125** the Hon'ble Apex Court observed that even though the entire share capital of the appellant companies has been subscribed by the Government of India, it cannot be predicted that the companies themselves are owned by the Government of India. The companies, which are incorporated under the Companies Act, have a corporate personality of their own, distinct from that of the Government of India. The lands and buildings are vested in and owned by the companies: the Government of India only owns the share capital. Learned Senior Counsel has then referred the judgment in the case of **M/S. Electronics Corporation of India Limited & Others Vs. Secretary Revenue Department Govt. of Andhra Pradesh And Others** reported in **(1999) 4 SCC 458** (Para 15) and the judgment in the case of **M/S Rajpur Hydro Power Ltd. & Ors Vs. M/S PTC India Financial Services Ltd.** passed in **W.P. (C) 8031/2016 and CM APPL. 33321/2016** to strengthen the similar proposition as discussed hereinabove.

17. As regards the submission that the C.B.I. Manual and preliminary inquiry are mandatory, learned counsel has referred the observations of the Hon'ble Apex Court in Paragraph 58 of the judgment in the case of **Vineet Narain v. Union of India** reported in **(1998) 1 SCC 226** wherein it has been recorded that "…The CBI Manual based on statutory provisions of the Cr.P.C. provides essential guidelines for the C.B.I.'s functioning. It is imperative that the C.B.I. 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." It is submitted that in the case of **Shashikant vs. Central Bureau of Investigation & Ors.** reported in **(2007) 1 SCC 630**. It has been observed in Paragraph – 19 that "When an anonymous complaint is received, no investigating officer would initiate investigative process immediately thereupon. It may for good reasons carry out a preliminary enquiry to find out the truth or otherwise of the allegations contained therein."

18. It is submitted that in the case of **P. Sirajuddin etc. v. State of Madras etc.** reported in **AIR 1971 SC 520 : (1970) 1 SCC 595** it has been observed that "Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a persons specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general …. The means adopted no less than the end to be achieved must be impeccable.” It is, thus, submitted that inadherence to the procedure prescribed under Para 1.10.2 (b) of Chapter I and Para 17.4 (b) of Chapter 17 of CBI Manual by the C.B.I. and not conducting Preliminary Enquiry in the case of present petitioner is deliberate violation of direction of Hon’ble Apex Court. It is submitted that such act of C.B.I. amounts to blatant violation of Article 14 of the Constitution of India.

19. Learned Senior Counsel has also attempted to distinguish the ratio of the judgment of the Hon’ble Apex Court in the case of **Lalita Kumari Vs. Government of Uttar Pradesh And Others** reported in **2014 (2) SCC page 1,** it is submitted that the view taken by the Hon’ble Apex Court that if an information discloses commission of the cognizable offence, registration of F.I.R. is mandatory under Section 154 of the Code of Criminal Procedure without preliminary inquiry was in a different context as the Hon'ble Apex Court was dealing with the issue of Section 154 of Cr.P.C. in general regarding the power to be exercised by the State Police for making investigation without preliminary inquiry and as such it was held in Para 79 of **Lalita Kumari's Case** (supra) that : "Moreover, in the absence of any indication to the contrary in the Code itself, the provisions of the CBI Crime Manual cannot be relied upon to import the concept of holding of Preliminary Enquiry in the scheme of the Code of Criminal Procedure." It is submitted that the Hon'ble Apex Court also clarified in Para-79 that: "CBI is constituted under a Special Act, namely, the Delhi Special Police Establishment Act, 1946 and it derive its power to investigate from this Act." It is submitted that in the case of **Lalita Kumari** (supra) the Hon'ble Apex Court has clarified in Para-80 and 81 saying that Sections 4(2) & 5 of the Code permit special procedures to be followed for special acts." It is also held that a special provisions contained in D.S.P.E. Act relating to the powers of the CBI are protected also by Section 5 of the Code. It is submitted that in terms of the observations of the

Hon'ble Supreme Court in Paragraph-82 of the judgment in case of **Lalita Kumari** (supra) the powers of the CBI under the D.S.P.E. Act cannot be equated with the powers of the regular State Police under the Code.

20. It is submitted that the directions or observations made in **Vineet Narain** (supra), **Shashikant case** (supra) and **Sirajuddin case** (supra) still exists and cannot said to have been set aside in **Lalita Kumari** (supra). It is submitted that in the case of **State of Jharkhand through SP, CBI vs. Lalu Prasad @ Lalu Prasad Yadav**, the respondents quoted **Vineet Narain case** (supra) and alleged violation of C.B.I. Manual to which in recent judgment dated 08.05.2017 (Criminal Appeal No. 394 of 2017 with others), the Hon'ble Apex Court observed in Para-55 and 57 that : "55. No doubt about it that the CBI ought to have acted with more circumspection and ought to have followed the CBI Manual." and that "57. The criticism made by the senior counsel for respondent is not wholly unjustified. CBI ought to be guided by its Manual."

21. In the light of the aforementioned submissions and the judgment on which reliance have been placed by the learned Senior Counsel representing the petitioner, it is submitted that the C.B.I. has lodged the impugned F.I.R. in violation of the statutory mandatory provisions under Section 6 of the D.S.P.E. Act and it is also in violation of the proviso to the notification dated 19.02.1996 which is a kind of statutory bar on investigation of cases where the public servant employed in connection with the affairs of State of Bihar are concerned, even if the offences fall under first part of paragraph (a) (i) (ii) (iii) and (b). Learned Senior Counsel submits that the government company under Companies Act is not a government, majority shareholding of N.T.P.C. would not confer upon B.R.B.C.L. a status of the Central government. MOA & AOA of B.R.B.C.L. do not depict it to be 'owned or controlled' by Central Government and refer no provision showing that the Central Government controls over it's Board of Directors financially, administratively or functionally. In the case of **Bangalore Medical Trust Vs. B. S. Muddappa** reported in **1991 AIR 1902** it has been held that an illegality does not become in accordance with law even if the same is done by the highest executive of State. It is submitted, in a democracy, what prevails is a rule of law, not the height of person exercising power. The core principle of the rule of law must be upheld as emphasized by the Apex Court. "Be you ever so high, the law is above you".

22. The learned Senior Counsel has also taken this

Court through the judgment of the Hon'ble Apex Court in the cases of **State of West Bengal And Others Versus Committee for Protection of Democratic Rights, West Bengal And Others** reported in **2010 (3) SCC 571** (para 35 & 68), **Ms Mayawati vs. Union of India and others** reported in **(2012) 8 SCC 106**, (para 30 & 34), **M. Balakrishna Reddy** (supra) (para 19, 21 & 69), **Ali M. K.** (supra) (para 12), **K. Chandrasekhar vs. State of Kerala and others** reported in (1998) 5 SCC 223 (para 13), **Heavy Engineering Mazdoor Union vs. State of Bihar and others** reported in **(1969) 1 SCC 765**, **Subodh Ranjan Ghosh Vs. Sindri Fertilisers and Chemicals Ltd and another** reported in **AIR 1957 Patna 10, Kunga Nima Lepcha and others vs. State of Sikkim and others (W.P. (C) No. 20 of 2015)**, decided by Sikkim High Court on 06.10.2017, **Akahand Pratap Singh Vs. Union of India and others (W.P. (Crl.) 1073/2008)** decided by Delhi High Court on 05.03.2009 in support of his contention as mentioned hereinabove. It is submitted that from the counter affidavit filed on behalf of the State it would appear that the C.B.I. has not submitted any request with the State Government seeking consent in terms of Section 6 of the D.S.P.E. Act, 1946. Learned Senior Counsel, therefore, prays for quashing of the

F.I.R. and to grant the reliefs prayed in this application.

SUBMISSIONS ON BEHALF OF THE CENTRAL BUREAU OF INVESTIGATION (C.B.I.)

23. On the other hand Mr. Raghavacharyulu, learned Public Prosecutor for the C.B.I. assisted by Sri Bipin Kumar Sinha and Sri Sanjay Kumar, learned Standing Counsel representing the C.B.I. in this Court submits that a bare perusal of the F.I.R. as contained in Annexure-1 to the writ application would show that the B.R.B.C.L. is a subsidiary company of the National Thermal Power Corporation Ltd. (NTPC Ltd.). NTPC Ltd. is a public sector undertaking of the Central Government. The MOA of the B.R.B.C.L. would show that the registered office of the B.R.B.C.L. is situated in the national capital territory of Delhi. One of the main objects to be pursued by the company on its incorporation is to act as an agent of the NTPC/Railways or other public or Private Sector Enterprises, Financial Institutions, Banks, Central Government and State Governments engaged in the planning and development of power for preparation of preliminary feasibility reports, project reports and appraisal report regarding generation, purchase, sale trading, transmission and distribution of electricity and for taking up any such activity on their behalf which the company is empowered to undertake.

24. The B.R.B.C.L. has been incorporated with the main object such as to undertake wherever necessary the construction of transmission of lines and ancillary works for timely and coordinated exchange of electric power. The B.R.B.C.L. can act as civil engineers, electrical engineers, mechanical engineers, advisors, consultant, contractors, suppliers of electricity, electronics and communication system for the purpose of generation of power or otherwise and manufacturers of and dealers in apparatus and things required for use in connection with the generation, transmission, distribution, sub-transmission and supply of power. Referring to the subscribers to the MOA learned Public Prosecutor submits that the NTPC Ltd. is holding 73,500 nos. of equity shares of B.R.B.C.L. whereas the railway board, Ministry of Railways is holding 25,900 shares. It is submitted that the B.R.B.C.L. is a joint venture of the NTPC Ltd. and the Central Government through Ministry of Railways. It is pointed out that Article 1.2 of the AOA the word "Affiliates" or "Associates" in relation to NTPC Ltd. and Railways respectively shall mean person(s)/body corporate of which NTPC Ltd. and Railways, as the case may be, is owner or beneficial owner of not less than 50% of the paid-up capital/voting rights. It is submitted that in the present case B.R.B.C.L. will come within the definition of affiliates or associates in relation to NTPC Ltd. and Railways because the NTPC Ltd. and Railways are owner and beneficial owner of not less than 50% of the paid-up capital/voting rights of the B.R.B.C.L.

25. It is further submitted that in fact a reading of the AOA would show that the word project has been defined under Article 1.24 which reads "Project" shall mean the 1000 MW Coal Based Power Project, to be set up by the Company at Nabinagar, District Aurangabad, in the State of Bihar or any other suitable site in the State of Bihar. The learned public prosecutor submits that so far as the management structure of the B.R.B.C.L. is concerned, Article 109 of the AOA provides that the management of the day-to-day affairs of the company shall vest with CEO. CEO shall not be a member of the Board but shall be special invitees to the meetings of the Board. The CEO shall always be nominated by NTPC and appointed by the Board. NTPC Ltd. shall be entitled to replace the CEO. Clause (iii) of the Article 109 provides the functional management of the Company including sourcing, purchasing, personnel, finance and other commercial and managerial decisions shall vest with the CEO, who shall have full authority and responsibility for the management of day-to-day affairs of the Company for which appropriate powers shall be delegated to him by the Board. In like manner the Board may withdraw or annul any such power and/or authority as may be considered necessary. Article 110 of the AOA provides that the Directors shall be nominated by each party in accordance with its equity shareholding as provided in Article 1 who shall also determine the period for which their respective nominees shall hold office. Such Directors nominated by respective parties shall be appointed by the Board. The Directors shall be entitled to such sitting fee as may be decided by the Board of Directors within the ceiling provided in the Act. However, Article 115 provides subject to the approval of NTPC Ltd. and Railways for their respective nominees, the Board of Directors of the Company may appoint an alternate Director to act for a Director during his absence for a period of not less than three months from the State in which the meetings of the Board are ordinarily held.

26. Pointing out to Article 170, learned Public Prosecutor submits that Article 170 starts with a non-obstantee clause and reads as under:-

> *"170. Notwithstanding anything contained in all these Articles but subject to*

the provisions of the Act, NTPC Ltd. may from time to time, issue such directives or instructions as may be considered necessary in regard to the finances, conduct of the business and affairs of the company and in like manner may vary and annul any such directives or instructions. The Director(s) shall give immediate effect to the directives or instructions so issued. All directives issued by NTPC Ltd. shall be in writing addressed to the Chairman of the Company."

27. A copy of the extract of the annual return has been placed on record to show that the NTPC Ltd. and Ministry of Railways are controlling the affairs of the B.R.B.C.L.

28. Learned Public Prosecutor submits that so far as NTPC Ltd. is concerned, it will appear from the 'AOA' of the NTPC Ltd. which is available on the record that the business of the NTPC Ltd. is managed by the Board of Directors subject to the compliance of the conditions stipulated in Department of Public Enterprises Office memorandum No. DPE/11 (2)/97-Fin. dated 22nd July, 1997 as modified from time to time. By virtue of Article 14 of the AOA of the NTPC Ltd. the President shall from time to time determine the number of Directors of the Company which shall be not less than 4 and not more than twenty (20). These Directors may be either whole time functional Directors or part time directors. Article 41 (i) (a) provides that the Chairman shall be appointed by the President. All other members of the Board of Directors including Vice-Chairman shall be appointed by the President in consultation with the Chairman of the Company. No such consultation will be necessary in case of appointment of Directors representing the Government. It is thus pointed out from AOA of the NTPC Ltd. that the NTPC Ltd. is under direct control of the Government of India by virtue of the power conferred upon the President to appoint the members of the Board of Directors of the NTPC Ltd. It is also submitted that in the aforementioned background of the stipulations present in the AOA of the B.R.B.C.L. and the NTPC Ltd. it is evident that the B.R.B.C.L. is virtually acting as an agent of the NTPC Ltd. and the Railways. The B.R.B.C.L. is also an associate and affiliate of NTPC Ltd. and Railways and the Chief Executive Officer of the B.R.B.C.L. is appointed by the Board of NTPC Ltd which clearly demonstrate that the B.R.B.C.L. as an agent of the NTPC Ltd. and the Railways is under ulitmate control of the Central Government.

29. The learned Public Prosecutor thereafter submits that according to reliable sources information CBI came to know that in relation to construction work of four units of 250 MW at Nabinagar in the District of Aurangabad the joint venture project has been developed by B.R.B.C.L. with NTPC having 74 percent share in respect of which construction was proposed in the 2005-06 Union Budget and the Central Govt. approved the company in February, 2007, but work on the plant was delayed due to land acquisition problems at Nabinagar. The Actual work of B.R.B.C.L. power plants started in 2008-09. The four units of B.R.B.C.L. plant are proposed to be constructed on around 1500 acres of land at Nabinagar and all of them are to be completed at a revised cost of around Rs.8,100 crore. The information reveal that large scale corruption and siphoning of government funds has taken place in the land acquisition for the plant of B.R.B.C.L. by the B.R.B.C.L. officials in criminal conspiracy with the local and district administration. The learned Public Prosecutor has taken this Court through the contents of the allegations as contained in Annexure-A to the FIR and submits that the FIR clearly states that Sri C. Shiv Kumar, CEO, B.R.B.C.L., Navinagar entered into a criminal conspiracy with Kanwal Tanuj, District Magistrate, Aurangabad, other unknown officers/officials of the B.R.B.C.L., local district administration and Sri Gopal Prasad Singh (now deceased). He has pointed out the entire allegations which have been taken note of by this Court under the heading 'Brief Notes' in the very beginning of this judgment.

30. The learned Public Prosecutor submits that in the present case the petitioner has not challenged the competence of C.B.I. to investigate the offences alleged in the FIR. Admittedly, the offences alleged in the FIR under the provisions of the Indian Penal Code and under the Prevention of Corruption Act, 1988 are covered under the notification issued by Central Government in terms of Section 3 of the D.S.P.E. Act, 1946. It is submitted that the moment the offences alleged in the FIR are covered under the notification of the Central Government under Section 3 of the DSPE Act, 1946 and it is found that the allegations of commission of such offence have been leveled against the Chief Executive Officer of B.R.B.C.L. who is an agent of the NTPC Ltd. and Railways, the allegations are liable to be investigated by the CBI. This is because the B.R.B.C.L. by virtue of the covenants present in the AOA is an agent and affiliate or associate of the NTPC Ltd. and the Railways as also the registered office of the B.R.B.C.L. is situated in the union territory of Delhi. For purpose of institution of FIR and to investigate in the matter of affairs of the B.R.B.C.L., no consent of the Government of Bihar would be required.

31. It is further pointed out that so far as the notification dated 19.02.1996 issued by the Government of Bihar is concerned, the said notification would not come in the way of the investigation in the present case. It is because once in connection with affairs of B.R.B.C.L. the investigation proceeds, it is liable to take in its fold all such persons who may be found involved in conspiracy and commission of the offence. It is submitted that consent as envisaged under Section 6 of the DSPE Act, 1946 is required only when the offences alleged has taken place in the territory of State and no part of it has taken place in the union territory and the allegations are not concerned with the affairs of the Central Government or a Corporation controlled by the Central Government. It is submitted that in present case since part of the offence has been alleged in the office of B.R.B.C.L. which is having registered office at Delhi and the Chief Executive Officer of the B.R.B.C.L. against whom there are allegations of entering into conspiracy with this petitioner discharges his duty under command of the Board of Directors from the registered office of the B.R.B.C.L., it cannot be said that to register an F.I.R. and investigate the matters connected to the affairs of the B.R.B.C.L. the consent of the Government of Bihar would be required only because the conspiracy extends to any area falling in the State of Bihar.

32. It is, thus, submitted that at the first instance the stand of the CBI would be that no consent is required in the given facts and circumstances of the case. Learned Public Prosecutor has in course of submission in fact argued that if the engine belongs to the CBI, the coaches attached to the engine would also be within the ambit of the investigation. It is further submitted that Section 6 of DSPE Act, 1946 applies for purpose of investigation and not for the purpose of lodging the FIR. In this connection the learned Public Prosecutor has relied upon the judgment of the Hon'ble Delhi High Court in the case of **Virbhadra Singh & Anr. Vs. Central Bureau of Investigation and Ors passed in W.P. (Crl) 2757/2015 and CRL.M.A. 17536-17538/2015**. In paragraph 185 of the said judgment a Bench of the Hon'ble Delhi High Court has held that "conduct of investigation is a post FIR/RC registration development. Pertinently, Section 6 does not state that prior to registration of RC/FIR, the DSPE/CBI would need consent of any State. Since the FIR/RC has been registered at Delhi and the learned Special Judge at Delhi has jurisdiction. So far as its registration is concerned, the same cannot be questioned by resort to Section 6 of the D.S.P.E. Act."

33. Learned Public Prosecutor has further alternatively submitted that with regard to validity of the investigation being conducted by the CBI in the State of Bihar, the general consent under the first part of the notification dated 19.02.1996 would be sufficient because the offence committed is in connection with the funds of the company and it is alleged in the FIR that this power project was approved by the Central Government in the Union Budget of the year 2005-06.

34. It is thus submitted that the funds being that of the Central Government in whatever form which are being utilized in erection of the power plant in the State of Bihar, the allegations are that of siphoning of the funds by an agent (B.R.B.C.L.) of the NTPC Ltd. and Railways strengthens the submission of the CBI that even if this Court would come to a conclusion that consent from the State Government is required, it should be held that notification dated 19.02.1996 (first part) duly confers such consent and in such circumstance the proviso on which reliance has been placed by the petitioner cannot come in the way of the C.B.I.

35. It is submitted that further with regard to validity of the investigation conducted by CBI no issue may be raised in the writ petition because all such issues would be available to be raised by the accused, if and when the occasion arises. It is submitted that the investigation is still going on, charge-sheet has not yet been filed and therefore if and when the charge-sheet is filed it would emerge as what are the materials/evidences collected by the investigating agency that are sought to be relied upon by the prosecution. Reference in this regard has once again been made to paragraph 186 of the judgment of the Hon'ble Delhi Court High Court in the case of **Virbhadra Singh** (supra).

36. Learned Public Prosecutor has while answering the submissions of learned senior counsel for the petitioner as regards the concept of the federal structure of the Constitution of India submits that the concept of federal structure under the Constitution of India is an inter-play of Entry 8 of List I dealing with Central Bureau of Intelligence and Investigation and Entry 2 of List II dealing with police to contend that police was on the State list. It is submitted that the stand taken on behalf of the petitioner that investigation without consent of the State government would impinge on the doctrine of separation of power between the centre and the State on the federal structure is a fallacy. In the nature of the present case, it is submitted that where the government of India funds have been allocated in the Union budget in whatever form for the purpose of construction of power plant in the State of Bihar and the allegation is that of siphoning of the funds by the Chief Executive Officer of the B.R.B.C.L. which was approved by the Central Government in connivance with the petitioner and other persons, no consent is required from the State government. The matter relates to a charge of corruption committed in connection with the affairs of the B.R.B.C.L. which is non-else but an agent, associates and affiliates of the NTPC Ltd. and the Central Government through the Ministry of Railways.

37. Learned Public Prosecutor submits that the reliance placed by the petitioner on the judgments of the Hon'ble Apex Court in the case of **State of West Bengal** (Supra) and in the case of **M. Balakrishna Reddy** (Supra) is misplaced inasmuch as those judgments would not apply in the facts of the case. It is submitted that the ratio of the judgments in the case of **M. Balakrishna Reddy** (supra) is more in favour of the respondent and support the contention of the respondent that consent under Section 6 of the D.S.P.E. Act, 1946 need not be like a statute. It is also submitted that in the case of **Sushil Suri Versus Central Bureau of Investigation and Another**

reported in **(2011) 5 SCC 708** and in the case of **State of Madhya Pradesh Versus Narmada Bachao Andolan and Another** reported in **(2011) 7 SCC 639**, the Hon'ble Apex Court had made it clear that "a judgment may not be followed in a given case if it has some *distinguising features*. A little differene in *facts or additional facts* may make a lot of difference to the precedential value of a decision. A judgment of the court is not to be read as a statute, as it is to be remembered that judicial utterances have been made in *setting of the facts of a particular case. One additioal or different fact may make a world of difference between the conclusions in two cases.* Disposal of cases by blindly placing reliance upon a decision is not proper." It is submitted that all other judgments relied upon by the writ petitioner are different from the facts of the present case and all those are capable of being distinguished. It is submitted that even the judgment in the case of Mayawati would not apply to the facts of the present case. In the said case FIR was quashed because the same was registered under the wrong premise that the Hon'ble Supreme Court had directed for registration of the FIR against Ms. Mayawati.

38. As regards the CBI's Manual, learned public prosecutor submits that the CBI Manual is made for internal purposes. In any event the said CBI manual clearly states that offences are substantially and essentially in connection with the affairs of the Central Government, the investigation shall be done by CBI though very senior level State Public Servants are involved in the office. The State government shall be kept informed of the developments qua the public servants of the State for information. Therefore, the contention that CBI Manual contemplates that the investigation of State Public Servants cannot be done by CBI without the consent of the State is incorrect. Similarly, in so far as the contention that preliminary enquiry is a mandatory requirement before registering the regular case/FIR is also not correct. Learned counsel submits that it is discretion of the concerned Superintendent of Police either to go to the root of the preliminary enquiry or register the case directly depending upon the information available with CBI. It is submitted that in any event in **Lalita Kumari's Case** (supra) at para 89 the Hon'ble Supreme Court of India made it very clear that the CBI manual is not a subordinate legislation, has no recognition by Cr.P.C. and hence the same cannot be taken as a Statute or a binding legislation. In these facts and circumstances, it is submitted by learned Public Prosecutor that the writ application is fit to be dismissed.

STAND OF THE STATE

39. The State of Bihar has filed a counter affidavit which is in fact of no assistance. In sum and substance the counter affidavit in paragraph 6 states as under:

> *"6. That it is further submitted that the land mentioned in the FIR of RC AC1 2018 A002 dated 21.02.2018 registered by the Central Bureau of Investigation is situated at Aurangabad District of the State of Bihar. However, as per record available in the Home Department, Government of Bihar no consent of the State Government under Section 6 of the Delhi Special Police Establilshment Act, 1946 has been sought for by the Central Bureau of Investigation for investigation of the aforeasid case."*

40. The plea of C.B.I. in its counter affidavit was served upon the State on 19.04.2018, therefore, the State was well aware of the stand of C.B.I. as regards the notification dated 19.02.1996 but in it's counter affidavit sworn on 26.04.2018, the State has chosen to maintain a complete silence. State has not answered the statement made in paragraph 13 of the counter affidavit of C.B.I. where it is stated that a general consent under Section 6 of the D.S.P.E. Act, 1946 is already given by the State, hence, there is no need of a separate notification. The plea of C.B.I. in para 17 of their counter affidavit that "since the matter of B.R.B.C.L. comes under original jurisdiction of Delhi Special Police Establishment/C.B.I. and no consent of the State Government under Setion 6 of the D.S.P.E. Act is required, hence, no such consent under Section 6 of the D.S.P.E. Act was taken from the State of Bihar for registation and investigation of the present case" has not at all been contested by the State. No notes of argument has been submitted by the State. Even in course of oral arguments which took place on several days no one on behalf of the State has assisted this Court by way of oral arguments and the entire contest has been left to be decided on the basis of the submissions of the petitioner on the one hand and the C.B.I. on the other hand.

CONSIDERATION

41. Having heard learned senior counsel representing the petitioner and the learned Public Prosecutor on behalf of the CBI, this Court finds that in the present case it is alleged in Annexure-A to the FIR that construction work of B.R.B.C.L.

was proposed in the 2005-06 Union Budget and the Central Government approved the company in February, 2007. The fact is that in the AOA of the B.R.B.C.L. the word “Project” has been defined to mean 1000 MV coal based power project to be set up by the company at Nabinagar, District Aurangabad, in the State of Bihar or any other suitable site in the State of Bihar. It is also evident from the definition of the word “Affiliates” or “Associates” as appearing from the AOA that affiliates or associates in relation to NTPC Ltd. and Railways respectively shall mean person(s)/body corporate of which NTPC Ltd. and Railways, as the case may be, is owner or beneficial owner of not less than 50% of the paid-up capital/voting rights. In the present case it is not in dispute that more than 50% of the paid-up capital is owned by the NTPC Ltd. and Railways and, therefore, this Court would have no hesitation in holding that the B.R.B.C.L. is an “affiliates” or “associates” in relation to NTPC Ltd. and Railways respectively. It is further evident from the management structure of the B.R.B.C.L. that Board of Directors of B.R.B.C.L. consists of nominees of NTPC Ltd. and Railways in proportion to their respective shareholding. The Chief Executive Officer has been entrusted with the power, but he is under the control of the Board of Directors. Under Article

170 of AOA which contains a non-obstenteee clause it is the NTPC Ltd. who has been given power to issue such directives or instructions as may be considered necessary in regard to the finances, conduct of the business and affairs of the company and in like manner may vary and annul any such directives or instructions. All directives issued by NTPC Ltd. are binding on the Directors of B.R.B.C.L. It is also noticed that NTPC Ltd. is a Public Sector Undertaking and its Board of Directors consists of members appointed by the President. The Chairman of the NTPC Ltd.is appointed by the President is also apparent from the AOA of the NTPC Ltd.

42. The registered office of the B.R.B.C.L. is in the union territory of Delhi. The B.R.B.C.L. has taken up construction work of the four units of 250 MV at Nabinagar, District Aurangabad. The allegation is that in connection with this unit in the matter of land acquisition large scale corruption and siphoning of funds have come to the notice of the CBI. CBI has registered the FIR when it was revealed by source that Sri C. Sivakumar, CEO, B.R.B.C.L. has entered into a criminal conspiracy with Sri Kanwal Tanuj, District Magistrate, Aurangabad (the petitioner) and other unknown officers/officials of the B.R.B.C.L., local district administration and pursuant to that conspiracy this petitioner fraudulently directed that 7.45 acres of land of Khata no.12 plot no.1 of Mauja Kajrain be recorded in the name of one Gopal Prasad Singh. FIR also reveals that this petitioner had written to the Chief Executive Officer of the B.R.B.C.L. to make payment of Rs.2,07,84,583/- to Sri Gopal Prasad Singh within 48 hours. Once this Court finds that the construction work of the four units of power plant at Nabinagar, District Aurangabad was a part of the Union Budget in the year 2005-06 and further that B.R.B.C.L. was no doubt incorporated at body corporate, but was in fact acting as an agent of the NTPC Ltd. and Railways, it's C.E.O. allegedly indulged in siphoning of the government funds and involved in the offences alleged against him are under various provisions of the I.P.C. and under the provisions of the Prevention of Corruption Act which are covered under the notification of the DSPE Act, 1946, there is no reason why such offences cannot be registered and investigated by the C.B.I. The materials available on the record clearly demonstrate that the registered office of the B.R.B.C.L. is in the union territory of Delhi, the funds for the purpose of construction of power plant are the funds provided by the Central Government in terms of the Union Budget proposed in the year 2005-06 and only to give effect to and implement the said proposal of the Union Budget B.R.B.C.L. was floated, this Court would take a view that in the given facts and circumstance where the source to the CBI revealed that the Chief Executive Officer of the B.R.B.C.L. has entered into a criminal conspiracy with this petitioner, there was no embargo on the CBI in lodging an FIR at Delhi and taking up investigation of the case.

43. The next question which fell for consideration and on which the parties have argued at length is as to whether the notification dated 19.02.1996 issued by the State Government in any way comes in the way of the CBI in the matter of taking up the investigation against this petitioner. Before answering this question, this Court would take note of the provisions of the DSPE Act, 1946 as under:-

> ***1. Short title and extent****.—(1) This Act may be called the Delhi Special Police Establishment Act, 1946.*
> *(2) It extends to the whole of India [5]***.*
> *[6][****1A. Interpretation section****.— Words and expressions used herein and not defined but defined in the Central Vigilance Commission Act, 2003 (45 of 2003), shall have the meanings, respectively, assigned to them in that*

Act.]

2. Constitution and powers of special police establishment**.—(1) Notwithstanding anything in the Police Act, 1861 (5 of 1861), the Central Government may constitute a special police force to be called the Delhi Special Police Establishment [7] for the investigation [8][in any [9][Union territory]] of offences notified under section 3.*

(2) Subject to any orders which the Central Government may make in this behalf, members of the said police establishment shall have throughout [10][any [9][Union territory]], in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers of [11][that Union territory] have in connection with the investigation of offences committed therein.

(3) Any member of the said police establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise in [10][any [9][Union territory]] any of the powers of the officer in charge of a police station in the area in which he is for the time being and

when so exercising such powers shall, subject to any such

1. The Act has been extended to Goa, Daman and Diu by Reg. 12 of 1962, s. 3 and the Sch. to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and the Sch. I (w.e.f. 1-7-1965); and to Pondicherry by Reg. 7 of 1963, s. 3 and the Sch. I (w.e.f. 1-10-1963), to Lakshadweep (w.e.f. 1-10-1967) vide Reg. 8 of 1965, s. 3 and the Sch. and to Sikkim (w.e.f. 15-5-1976); vide notification No. S. O. 1668, dated 6-5-1976. 2. Subs. by Act 26 of 1952, s. 2, for certain words. 3. Subs. by the A.O. 1956, for "Part C States". 4. The words "in the States" omitted by Act 3 of 1951, s. 3 and the Sch. 5. The words "except the State of Jammu and Kashmir" which were subs. by Act 3 of 1951, for "except Part B State" omitted by Act 62 of 1956, s. 2 and the Sch. 6. Ins. by Act 45 of 2003, s. 26 (w.e.f. 11-9-2003). 7. The words "for the State of Delhi" omitted by Act 26 of 1952, s. 3. 8. Subs., ibid., for "in that State". 9. Subs., by the A.O. 1956, for "Part C State". 10. Subs., ibid., for "the State of Delhi". 11. Subs., ibid., for "that State".

orders as aforesaid, be deemed to be an officer in charge of a police station discharging functions of such an officer within the limits of his station.

3. Offences to be investigated by special police establishment**.—The Central Government may, by notification in the Official Gazette, specify the offences or classes of offences [1] which are to be investigated by the Delhi Special Police Establishment.*

*[2][**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.

***4A. Committee for appointment of Director**.— [3][(1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—*

(a) the Prime Minister — Chairperson;

[4][(b) the Leader of Opposition recognised — Member;]

as such in the House of the People or where there is no such Leader of Opposition, then the Leader of the single

largest Opposition Party in that House
(c) the Chief Justice of India or Judge of the Supreme — Member.]
Court nominated by him
[5][(2) No appointment of a Director shall be invalid merely by reason of any vacancy or absence of a Member in the Committee.]
(3) The Committee shall recommend a panel of officers—
(a) on the basis of seniority, integrity and experience in the investigation of anti-corruption cases; and
(b) chosen from amongst officers belonging to the Indian Police Service constituted under the All-India Services Act, 1951 (61 of 1951),
for being considered for appointment as the Director.

1. The words "committed in connection with matters concerning Departments of the Central Government" omitted by Act 26 of 1952, s. 5.
2. Subs. by Act 45 of 2003, s. 26, for section 4 (w.e.f. 11-9-2003).
3. Subs. by Act 1 of 2014, s. 58 and the Schedule, for sub-section (1) (w.e.f. 16-1-2014).
4. Subs. by Act 28 of 2014, s. 2, for clause (b) (w.e.f. 29-11-2014).
5. Ins. by, s. 2, ibid. (w.e.f. 29-11-2014).

***4B. Terms and Conditions of service of Director**.- (1)The Director shall, notwithstanding anything to the contrary contained in the rules relating to his conditions of service, continue to hold* *office for a period of not less than two years from the date on which he assumes office.*

(2) The Director shall not be transferred except with the previous consent of the Committee referred to in sub-section (1) of section 4A.

[1][4BA. Director of Prosecution. —(1) There shall be a Directorate of Prosecution headed by a Director who shall be an officer not below the rank of Joint Secretary to the Government of India, for conducting prosecution of cases under this Act.

(2) The Director of Prosecution shall function under the overall supervision and control of the Director.

(3) The Central Government shall appoint the Director of Prosecution on the recommendation of the Central Vigilance Commission.

(4) The Director of Prosecution shall nothwithstanding anything to the contrary contained in the rules relating to hi conditions of service, continue to hold office for a period of not less than two years from the date on which he assumes office.]

4C. Appointment for posts of Superintendent of Police and above,

extension and curtailment of their tenure, etc.—[2]*[(1) The Central Government shall appoint officers to the posts of the level of Superintendent of Police and above except Director, and also recommend the extension or curtailment of the tenure of such officers in the Delhi Special Police Establishment, on the recommendation of a committee consisting of : —*

(a) the Central Vigilance Commissioner —Chairperson;

(b) Vigilance Commissioners —Members;

(c) Secretary to the Government of India in —Members;

Charge of the Ministry of Home

(d) Secretary to the Government of India in charge of the —Members:

Department of Personnel

Provided that the Committee shall consult the Director before submitting its recommendation to the Central Government.]

(2) On receipt of the recommendation under sub-section (1), the Central Government shall pass such orders as it thinks fit to give effect to the said recommendation.]

5. ***Extension of powers and jurisdiction of special police establishment to other***

***areas**.—(1) The Central Government may by order extend to any area (including Railway areas) [3][in [4][a State, not being a Union territory]] the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under section 3.*

(2) When by an order under sub-section (1) the powers and jurisdiction of members of the said police establishment are extended to any such area, a member thereof may, subject to any orders which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of the police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.

[5][(3) Where any such order under sub-section (1) is made relation to any area, then, without prejudice prejudice to the provisions of sub-section (2), any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer in charge of a police station in

that area and when so

1. Ins. by Act 1 of 2014, s. 58 and the Schedule (w.e.f. 16-1-2014).
2. Subs. by s. 58 and the Schedule, ibid., for sub-section (1) (w.e.f. 16-1-2014).
3. Subs. by Act 26 of 1952, s. 5, for "in India outside the State of Delhi".
4. Subs. by the A.O, 1956, for "a Part A State or a Part B State".
5. Ins. by Act 40 of 1964, s. 5.

exercising such powers, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station.]

*[1][**6. Consent of State Government to exercise of powers and jurisdiction**.— Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in [2][a State, not being a Union territory or railway area], without the consent of the Government of that State.]*

*[3][**6A. Approval of Central Government to conduct, inquiry or investigation**.— (1) The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) except with the previous approval of the Central Government where such allegation relates to—*

(a) the employees of the Central

Government of the level of Joint Secretary and above; and

(b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

(2) Notwithstanding anything contained in sub-section (1), no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the Explanation to section 7 of the Prevention of Corruption Act, 1988 (49 of 1988)].

7. [Repeal of Ordinance 22 of 1946.] Rep. by the Repealing and Amending Act, 1950 (35 of 1950), s. 2 and Sch. I.

1. Subs. By Act 26 of 1952, s. 6 for s.6.

2. Subs. By the A.O.,1956, for "a Part A State or a Part B State, not being a railway area".

3. Ins. by Act 45of 2003, s. 26 (w.e.f. 11.9.2003)..

44. From a bare reading of the aforementioned provisions it would appear that Section 3 provides for a notification in the official gazette by the Central Government specifying the offences or class of offences which are to be investigated by the Delhi Special Police Establishment. It is not the case of the petitioner that the offences alleged in the present

FIR are not covered by the notification issued by the Central Government in terms of Section 3 of the DSPE Act, 1946. Section 4 talks of superintendence and administration of Special Police Establishment. This provision does not require any discussion in view of the issues involved in the present case. The arguments of the parties have centered around Section 5 and 6 of the DSPE Act, 1946. Under Section 5 the Central Government may by order extend to any area (including Railways areas), a State, not being an Union territory the powers and jurisdiction of the members of the Delhi Special Police Establishment for investigation of any offences or classes of offence specified in notification under Section 3. A question arises for consideration in the context of sub-section (1) of Section 5 as to whether the Central Government is required to issue any order to extend the area of investigation in a State where in course of investigation of a case relating to siphoning of funds of the Central Government by an agent of the Central Government through its Ministry of Railways and a public sector undertakings like N.T.P.C. Ltd. is required to be investigated beyond the limit of the union territory. In the opinion of this Court, if the investigation has begun in the matter of affairs of an agent of a Public Sector undertaking and the Central Government through Ministry of Railway with regard to siphoning of the funds by the agent entering into a criminal conspiracy with some persons who live outside the union territory the investigation cannot be stopped and no order in terms of Section 5 would be required to be issued by the Central Government. Section 5 would come into play only when the Central Government wants that the members of the Delhi Special Police Establishment should investigate any of the offences or classes of the offence specified in a notification under Section 3 which has taken place outside the union territory in any area including Railways areas and in the territory of a State. It is only in such circumstance the Central government is required to issue an order under Section 5 and such order is issued, the same would require consent of the State government in terms of Section 6 of the DSPE Act, 1946. A conjoint reading of Section 5 and 6 of the DSPE Act, 1946 nowhere suggest that the legislature had any intention to stop any investigation in want of consent of the State government even if such investigation relates to siphoning of the funds of the Central Government provided either by way of equity participation or loan by or through an agent of the Central Government acting in an area falling in a State.

45. The federal structure of the Indian Constitution would not envisage that a case of corruption where the allegations are there that the funds of the Central Government and a Public Sector Undertaking provied to a Government Company have been siphoned by a Chief Executive of the government company which was incorporated or floated as an agent of the Public Sector Undertaking and the Central Government through Ministry of Railways should not proceed and cannot be continued only because certain part of the offence under investigation has been committed in an area falling in a particular State. Section 6 saves the State from encroachment in the matter of policing in the area falling under the State. This is by virtue of Entry 2 List II of the 7th Schedule of Constitution of India. However, such encroachment is prohibited only when it is found that the Central Government has been looking for an investigation through the CBI in a matter which would not concern the Central Government and it is purely a matter falling under Entry 2 List II of the 7th Schedule of Constitution of India.

46. Once the offences or the classes of offences are covered under the notification issued by the Central Government in terms of Section 3 and the offences alleged are said to be in respect of the funds of the government being siphoned through its agent which is a corporate body and a government company through its Chief Executive Officer and the registered office of the said corporate body is in the Union Territory of Delhi, the institution of the FIR as well as the investigation taken up pursuant thereto cannot be stopped and no consent of the government of Bihar would be required to investigate the persons involved in commission of the offence. Such person may be an officer working in connection with the affairs of the State of Bihar, but where the offences alleged are in connection with the funds of the Government of India through its agent a government company having its registered office at Union Territory of Delhi, it would be immaterial that any other person involved in commission of the said offence is working in connection with the affairs of the State Government. In the facts of the present case, this Court is of the considered opinion that no consent of the State Government in terms of Section 6 of the DSPE Act, 1946 would be required.

47. As regards the CBI Manual, this Court finds that the contention of the learned senior counsel representing the petitioner cannot be accepted. In the given facts and circumstance, it is evident from the judgment of the Hon'ble Apex Court in the case of **Lalita Kumari** (supra) that the CBI

Manual has no statutory force. It is not a piece of subordinate legislation and has no recognition by Cr.P.C.

48. Even though learned Senior counsel representing the petitioner submits that in the present case the B.R.B.C.L. cannot be said to be a company owned or controlled by the Central Government, this Court is of the considered opinion that first part of the notification dated 19.02.1996 in so far as it states that the consent of the government is in respect of the investigation of the offence committed in connection with the affairs of the Government of India, local authority subject to the control of the Government of India or any Corporation, Company or Bank owned and controlled by the Government of India cannot be given a narrow meaning.

49. In course of argument, learned Public Prosecutor For the C.B.I. has pointed out the background in which the notification dated 19.02.1996 came to be issued by the then Government of Bihar. Referring to the Judgment of the Hon'ble Division Bench of this Court in the case of **Shushil Kumar Modi & Ors. Vs. The State of Bihar and Ors**. Reported in **1996 (1) PLJR 561** the learned Public Prosecutor submits that while the said case was being heard by the Hon'ble Division Bench, the notification dated 19.02.1996 was issued and sought to be relied upon in order to submit that this Court should not issue a Mandamus/direction entrusting the investigation of a pending case to the C.B.I. . The Hon'ble Division Bench took note of the notification dated 19.02.1996 but in the facts and circumstances of the case the Hon'ble Division Bench observed inter alia " the aforesaid notification issued under Section 6 of the Delhi Special Police Establishment Act purports to accord general sanction/consent to the Delhi Special Police Establishment/ C.B.I. to investigate case of the nature mentioned in clauses (a) and (b). the notification, however, prohibits the C.B.I. from investigating the cases against the officers of the State Government. Coming as it does, just on the date of hearing of the case, one gets the impression that the State Government wanted somehow to pre-empt investigation against State Government officers involved in the 'Scam', little realising that such notification cannot prevent the High Court from entrusting the investigation to C.B.I. under Article 226 of the Constitution. The question as to whether it is a fit case for issuing any such direction apart. But if the intention of the Government was to pre-empt any such direction the same deserves to be deprecated."

50. In the aforementioned ground, when this Court goes through the observations of the Hon'ble Supreme Court in paragraph 71 of the judgment in the case of **M. Balakrishna Reddy** (Supra), it is noticed that the consent of the State Government under Section 6 of the D.S.P.E. Act is required for the application of the Act, but Section 6 does not provide for a mandatory consent in the matter where an offence is alleged like the present one involving a Chief Executive Officer of a Government company of siphoning of funds in criminal conspiracy with a Public Servant posted with the State Government. It is to be kept in mind that Section 6 of the D.S.P.E. Act talks of "consent" and not "Sanction". Both are two different words and are in two different context. In paragraph 71 in the case of **M. Balakrishna Reddy** (Supra) the Hon'ble Apex Court held as under:

> *"71. A closer scrutiny of the relevant provisions of the Delhi Act also add credence to the view which we are inclined to take. Section 3 refers to "notification" and requires the Central Government to issue notification specifying offences or class of offences to be investigated by Special Police Establishment. Section 5 uses the term "order" and enables the Central Government to extend powers and*

jurisdiction of Special Police Establishment to other areas not covered by the Act. Section 6 which speaks of consent of the State Government for the exercise of powers and jurisdiction of the Special Establishment neither refers to "notification" nor "order". It merely requires the consent of the State Government for the application of the Delhi Act. Parliament, in our considered opinion, advisedly and deliberately did not specify the mode, method or manner for granting consent though in two preceding sections such mode was provided. If it intended that such consent should be in a particular form, it would certainly have provided the form as it was aware of different forms of exercise of power. It, therefore, depends on the facts of each case whether the consent required by Section 6 of the Delhi Act has or has not been given by the State Government and no rule of universal application can be laid down."

51. In the light of the forgoing conclusion of the Hon'ble Apex Court when the facts of **M. Balakrishnan Reddy** (Supra) is noticed, it is found that in the said case the facts of the case were that the appellant there appeared in the examination conducted by the Union Public Service Commission ("UPSC" in short). The examination was conducted at Hamidiya Arts and Commerce College, Bhopal on 01.11.1996. It was alleged that the appellant was found to be in possession of pre-written answersheets which were similar, if not identical, to the answersheets supplied by the Examination Board. The appellant was taken out of the hall and a statement was recorded in which he confessed to have pre-written answer sheets with him. The matter was then reported to UPSC head office at New Delhi. A preliminary inquiry was instituted and on being prima facie satisfied about the allegations levelled, the Secretary, UPSC, lodged a criminal case against the appellant for offences punishable under Sections 420, 471, 474, 467, 468 and 471 read with Section 511 of the Indian Penal Code. A charge-sheet was filed in the court of Special Judge, Central Bureau of Investigation, Indore.

52. At this stage a preliminary objection was raised by the appellant contending that the alleged offences had been committed at Bhopal in the State of Madhya Pradesh and C.B.I. had no power, authority or jurisdiction to institute a criminal proceeding. In the facts of the said case it was contended that before initiating a proceeding under the Delhi Special Police Establishment Act, 1946 consent of the State was required. Since no consent had been given by the State of Madhya Pradesh, it was contended that the proceeding initiated against the appellant by C.B.I. were without jurisdiction.

53. In the case of **M. Balakrishnan Reddy** (Supra) the Hon'ble High Court upheld the contention of the C.B.I. that the case could have been initiated since alleged offences have been committed in conduct of UPSC Examination which had been conducted by its Delhi Office which is the headquarter of the UPSC and hence, D.S.P.E. Act was applicable. The Hon'ble High Court also held that because the appellant was selected in Indian Forest Service Examination conducted by UPSC and was an officer of the Central Government, the D.S.P.E. Act would apply for cognizance of offence committed by him as a Central Government employee and C.B.I. had power to prosecute.

54. The Hon'ble Apex Court, however, disagreed with the reasoning and rational provided by the Hon'ble High Court and not being impressed by those reasonings of the High Court, proceeded to consider in the facts of the said case whether "consent" as envisaged by Section 6 of the Delhi Act has been given by the State Government of Madhya Pradesh to the Central Government so as to enable the latter to invoke the provisions of the Delhi Act. While considering the "consent" letter of the State of Madhya Pradesh and after discussing a number of judicial pronouncement on the subject the Hon'ble Apex Court in paragraph 19 of the judgment in the case **M. Balakrishna Reddy** (Supra) held as under:

> *"19. Plain reading of the above provisions goes to show that for exercise of jurisdiction by CBI in a State (other than Union Territory or Railway area), consent of the State Government is necessary. In other words, before the provisions of the Delhi Act are invoked to exercise power and jurisdiction by Special Police Establishment in any State, the following conditions must be fulfilled:*
> *(i) A notification must be issued by the Central Government specifying the offences to be investigated by Delhi Special Police Establishment (Section 3);*
> *(ii) An order must be passed by the Central Government extending the powers and jurisdiction of Delhi Special Police Establishment to any State in respect of the offences specified under Section 3 (Section 5); and*
> *(iii) Consent of the State Government must be obtained for the exercise of powers by Delhi Special Police Establishment in the State (Section 6)."*

55. After lying down the three conditions in paragraph 19, the Hon'ble Apex Court found that so far as the condition no. (i) and (ii) are concerned, there are appropriate notifications/order available. It is reiterated that in the present case the petitioner has not raised any question about the notification and order as envisaged under Section 3 and Section 5 respectively of the D.S.P.E. Act and therefore, on this aspect the entire argument has been advanced by learned Senior Counsel for the petitioner on Section 6 of the D.S.P.E. Act read with notification dated 19.02.1996 issued by the Government of Bihar.

56. Following the judgment of the Hon'ble Apex Court in the case of **M. Balakrishna Reddy** (Supra) when this Court proceeds to consider the plea of the petitioner that under proviso to the notification dated 19.02.1996 issued by the Government of Bihar, the C.B.I. must obtain consent from the Government of Bihar whenever it comes to investigate a Public Servant employed in connection with the affairs of the State of Bihar, this Court finds that the argument of the petitioner is based on a very narrow and restricted interpretation of the entire scheme of the D.S.P.E. Act, 1946. In the case of **M. Balakrishna Reddy** (supra) the entire allegation was that of commission of offences under the provisions of the Indian Penal Code at the examination centre situated in the State of Madhya Pradesh at Bhopal. There was no allegation of any criminal conspiracy between the officers of the UPSC and the appellant, no conspiracy angle was involved in the said case and the only reason for lodging of F.I.R. at Delhi was that the head office of the UPSC was at Delhi. In the present case the facts are totally different. The B.R.B.C.L. which is a government company is acting as an agent of the N.T.P.C. Limited which is a Public Sector Undertaking of the Central Government and that of the Central Government through Ministry of Railways. The registered office of a company is the principal place of business of a company. The B.R.B.C.L. was entrusted with the construction of the four units of 250 MW at Aurangabad and this was a proposal approved in the union budget of the year 2005-06. The Chief Executive Officer of the B.R.B.C.L. was having managerial power under the management structure of the B.R.B.C.L. and he while discharging his duties as Chief Executive Officer allegedly entered into a criminal conspiracy with this petitioner and others who are connected with the affairs of the State of Bihar. In such circumstances, on facts this case stands on a different footing from that of the case of **M. Balakrishna Reddy** (supra).

57. The proviso to the notification dated 19.02.1996 issued by the Government of Bihar cannot come to the rescue of the petitioner in the present set of facts and circumstances where the C.B.I. while investigating a case involving a government company who is acting as an agent of the public sector undertaking and Ministry of Railways finds that some more persons including those who are public servants presently working and serving under the Government of Bihar are also involved in the conspiracy which has an ultimate effect of causing unlawful loss to the principal for which the agent is working, no individual consent would be required in terms of Section 6 of the D.S.P.E. Act.

58. The contention of the learned Senior Counsel based on the proviso part of the notification dated 19.02.1996 could have been worth consideration if it could have been shown to this Court that the entire alleged offence in respect of which the C.B.I. has assumed jurisdiction to investigate relate to an affairs of the State of Bihar. This Court would, therefore, reiterate that in the facts situation of the present case no consent at all would be required from the Government of Bihar.

59. Learned Public Prosecutor has in course of argument even alternatively argued that the kind of consent which may be required from the Government of Bihar is very much available in the first part of the notification dated

19.02.1996. The State of Bihar in its' counter affidavit has not opposed this assertion of the C.B.I. in any form of pleading. As opposed to this learned Senior Counsel representing the petitioner has submitted that even the first part of the notification dated 19.02.1996 does not give consent to the C.B.I. to investigate in the matter of a company which is not owned or controlled by the Government of India. Much emphasis has been given by the learned Senior Counsel representing the petitioner on the word "… **Any corporation, company or bank owned or controlled by the Government of India.**" According to learned Senior Counsel the B.R.B.C.L. cannot be said to be a company owned or controlled by the Government of India and, therefore, by virtue of what is provided in Clause (a) of the first part of the notification dated 19.02.1996 the C.B.I. cannot investigate in the matter of the affairs of the B.R.B.C.L. This Court is afraid as such submissions of the learned Senior Counsel is to be noted only for purpose of rejection. This Court has discussed hereinabove and held that the B.R.B.C.L. is an affiliate and associate of the N.T.P.C. Ltd. which is a public sector undertaking of the Central Government and also of the Ministry of Railways, Government of India. The AOA of the B.R.B.C.L. is making it very clear that one of its main object behind incorporation was to act as an agent of the N.T.P.C. Ltd. and the Ministry of Railways, Government of India. If this is the position apparent from the AOA of the B.R.B.C.L., the percentage of holding of shares by the N.T.P.C. or the Railways in B.R.B.C.L. becomes irrelevant. Any person or personae-designate, who acts as an agent, affiliates or associates of a public sector undertaking of the Central Government and the Ministry of Railways, Government of India is definitely liable to be investigated for an allegation of siphoning of funds as those are the matters concerning the affairs of the Public Sector undertaking and the Central Government through Ministry of Railways and in the context of the present case where the construction of four power units plants were taken up as proposed under the union budget by the Union of India in the year 2005-06 and the B.R.B.C.L. was incorporated by approval of the Central Government to give effect to the proposal, by no stretch of imagination it can be allowed to argue that the affairs of B.R.B.C.L. cannot be investigated in the grab of restricted meaning assigned to the stipulations **“corporation and a company owned or controlled by the Government of India.”**

60. Several judgments have been cited on behalf of the petitioner to canvass that a company and incorporated company cannot assume the status of share holders. There is no doubt about the propositions of law which have been discussed on several occasions by the Hon'ble Apex Court but as it is well said every case has its own facts situation. All those judgments which have been placed before this Court on this issue have been rendered by the Hon'ble Apex Court while considering the true legal position with regard to character of a corporation or a company. The Hon'ble Apex Court has endorsed the well established doctrine in the case of **Saloman vs. Salomon & Co.** (supra). The Hon'ble Apex Court has also noticed that in course of time, the doctrine that the corporation or a company has a legal and separate entity of its own has been subjected to certain exception by the application of the fiction that the veil of the corporation can be lifted and its face examined in substance. In the case of the **Tata Engineering and Locomotive Co. Ltd.** (supra) it is held that "The doctrine of the lifting of the veil, thus marks a change in the attitude that law had originally adopted towards the concept of the separate entity or personality of the corporation. As a result of the impact of the complexity of economic factors, judicial decisions have sometimes recognized exceptions to the rule about the juristic personality of the corporation. It may be that in course of time these exceptions may grow in number and to meet the requirements of different economic problems.” In the case of **Tata Engineering Locomotive Co. Ltd.** (supra) the petitioner company had moved the Hon’ble Apex Court under Article 32 of the Constitution of India, the competence of the writ application was challenged by raising two preliminary grounds, the relevant in the present case being the objection that in view of the judgment of the Hon’ble Apex Court in the case of **State Trading Corporation of India Ltd.** (supra) the petitioner company cannot complain of infringement of the fundamental rights guaranteed by Article 19 of the Constitution of India. It was argued before the Hon’ble Apex Court that the fundamental right guaranteed by Article 19 can be claimed only by the citizens and cannot be claimed by a corporation. In the context of the said submission the Hon’ble Apex Court observed regarding the character of the corporation and refused to invoke the doctrine of lifting the veil in the context of the said case but in the facts of the present case and the context in which this Court has been called upon to examine the character of a corporation or a company such as B.R.B.C.L., this Court is of the considered opinion that in a case where the allegations are that of corruption against the Chief Executive Officer of a government company who is acting as an agent, affiliate or associate of a public sector undertaking of the Government of India and the Central Government through Ministry of Railways by pointing out the character of the corporation such as B.R.B.C.L. in the eye of law being different to that of it's share holders, the petitioner cannot gain and such submission could not impress this Court. The Character of the 'B.R.B.C.L'. being that of an agent of the N.T.P.C. Ltd. and Ministry of Railways, the offences alleged are in relation to the affairs of the Central Government and its Public Sector undertaking, hence, in the opinion of this Court, even the alternative argument of learned Public Prosecutor is bound to succeed.

61. For the aforesaid reasons, this Court is not persuaded to quash the first information report or to interfere with the investigation of the case. The C.B.I. is within its jurisdiction in going on with the present investigation. No interference is called for.

62. This application is dismissed.

(Rajeev Ranjan Prasad, J)

avin/-arvind

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CAV DATE	NA
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