

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :09.02.2018

PRONOUNCED ON :15.02.2018

CORAM:

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

**Crl.O.P.No.1204 of 2018 and
Crl.M.P.No.429 of 2018**

1.K.V.Raman
2.B.R.Babu
3.V.Govindaraj
4.K.Pajaniradja @ Kichena
5.M.Jonathan Daniel

.. Petitioners

/versus/

State by
The Inspector of Police,
SPE-CBI-ACB,
Chennai.
(cr.No.RC MAI 2017 A 0020)

Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records on the file of the respondent police relating to the impugned first information report in Cr.No.RC MA1 2017 A 0020 dated 18.09.2017 and quash the same.

For Petitioners :Mr.V.T.Gopalan, Sr.C for
Mr.Kamala kumar

For Respondent :Mr.K.Srinivasan, Spl.PP(CBI)

ORDER

This petition is filed under Section 482 of Criminal Procedure Code to quash the FIR against them arrayed as A2 to A6 in the complaint registered under Crime No.RC MA1 2017 A 0020, dated 18.09.2017 for the alleged offences under Sections 120B r/w 420 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 alleging that they being members of Convener and Co-ordinator of Central Admission Committee, are responsible for admission in to various professional courses in the Union Territory of Pondicherry, had violated the procedure and direction of the Government of India, Government of Pondicherry, Medical Council of India and the direction of the Hon'ble Supreme Court in respect of PG Medical Admission for the year 2017-2018.

2. Whereas the contention of the petitioners is that they being very responsible officers of Government of Pondicherry and academicians had been appointed as Members of Central Admission Committee [hereinafter referred to as "CENTAC"] and under their supervision, Medical admission for the PG Courses including Management quota had been conducted. Their role in the admission process is to sponsor the candidates to the respective quota as per their merit and it stop with that. They cannot be held

criminally liable for non admission of the candidate sponsored by them or for admission of candidates not sponsored by them.

3. On an allegation that 65 students, where admitted in the PG Courses run by various Private Institutions under Management quota who were not eligible for admission, but pursuant to the criminal conspiracy entered between these petitioners and the officials of Private Colleges, ineligible candidates have been admitted the case has been registered by CBI.

4. It is contended by the petitioners that they have not violated any of the procedure or direction of the Government of Medical Council of India. Due to political controversy, a case has been registered by CBI, which has no territorial jurisdiction over the Union Territory of Pondicherry. Further, it is contended by the petitioners that non-admission of candidate sponsored by CENTAC and admission of candidate not sponsored by CENTAC are making of Private College Management, which is subject matter of writ petitions pending in the High Court as well as the Hon'ble Supreme Court. As members of CENTAC, they have no role in the said alleged misdeed. In fact, the CENTAC took a conscious decision to protect the interest of genuine candidates sponsored by them. Therefore, a fee of Rs.10 lakhs was

collected by them and the concerned Colleges were instructed to admit the sponsored candidate. Despite that, some of the Institutions failed to honour the said direction. In such cases, CENTAC has warned them that they will recommend for cancellation of recognition. In fact, on 22.06.2017, a detailed complaint has been made to Medical Council of India about misdeed of the Private Institutions reducing to accommodate the candidate sponsored by the CENTAC.

5. While so, the criminal complaint registered against the members of the CENTAC has given a wrong impression among the general public as if the members of the CENTAC are responsible for the misdeed. The petitioners, who are responsible officials having discharged their duty blameless cannot be made as scapegoats for claiming political brown point. Therefore, the First Information Report is liable to be quashed.

6. The learned Senior Counsel appearing of the petitioners, apart from the above factual submission, would also submit that CBI has registered the complaint based on source information for which they are not empowered to do so, in the light of bar under Section 6 of Delhi Special Police Establishment Act, 1946. Further, the learned Senior Counsel appearing for the petitioners would submit that under General Clauses Act,

Section 3 (58) State includes Union Territory. In Entry 80 of List II in Schedule 7 of Indian Constitution the power of policing vest with State. Therefore, without consent of the Government of Puducherry, CBI cannot registered a case and investigate the matter, which exclusively falls within the domain of the State. When the Union Territory of Pondicherry as a State did not request the CBI to investigate the matter, the respondent cannot step into the domain of the States, at the instance of some political bigwigs. Further, when the subject matter of the admission has now been seized of by the Hon'ble Supreme Court in all propriety, the respondent should refrain from resorting to precipitate the issue by registering the criminal complaint.

7. In support of his argument, the learned Senior Counsel appearing for the petitioners would refer the judgments of the Hon'ble Supreme Court in (i) ***Management of Advance Insurance Company Limited v. Shri Gurudasmal and others*** reported in **1970 AIR 1126** and (ii) Judgment of this Court in ***Dr.MCR.Vyas v. The Inspector of Police, CBI Anti Corruption Branch Shastri Bhavan, Chennai*** reported in **2014 SCC online Mad. 4930**.

8. Per contra, the learned Special Public Prosecutor appearing for the

State would submit that the role of CENTAC does not stop sponsoring the candidates but should ensure the candidates sponsored by them are duly admitted in the respective Colleges and if not, to take necessary action. In case, the sponsored candidates fail to join respective college those seats should be shown as unfilled and the Second List of candidates should have been sponsored by the CENTAC.

9. As far as this case is concerned, the CENTAC has miserably failed to discharge the function but contrarily had facilitated the Private Institutions to admit the students of their own choice. Therefore, the deliberate inaction of the members of the CENTAC had given room to the Private Institute to admit the students who are not sponsored by the CENTAC by collecting exorbitant fees. Thereby, genuine and meritorious candidates are deprived of seat. After the advent of NEET, era the admission to Medical Course both for UG and PG has to be made based on the NEET score. In so far as, the Union Territory of Pondicherry is concerned, there are 380 PG/Diploma seats are available. Out of which, 162 seats are earmarked for Government quota and 156 seats are earmarked for Management quota. As against 156 seats under Management quota, 1827 candidates applied and the counselling was conducted by the CENTAC. On 04.05.2017, the first round of counselling

commenced and completed on 11.05.2017. The second round of counselling for the Government quota commenced on 11.05.2017. On the same day, first round of counselling for Management quota also commenced, which continued the next day i.e on 12.05.2017. The students allotted to the Private Colleges under Management quota were denied admission by the Private Colleges and the Deemed University. Even though this was brought to the notice of the CENTAC, immediately no effective action was taken by them.

10. The source information reveals that Four Institutes have denied the admission to students sponsored by CENTAC. The list of candidates denied their admission form part of the First Information Report. Those Institutes besides denying admission to the sponsored candidates had admitted candidates who were not sponsored by CENTAC. Since the wanton in action of the CENTAC to facilitate the Private Colleges to admit the students not sponsored by the CENTAC, the case has been registered and the same is under investigation.

11. The judgment of this Court reported in ***Dr.MCR.Vyas v. The Inspector of Police, CBI Anti Corruption Branch Shastri Bhavan, Chennai*** reported in ***2014 SCC online Mad. 4930*** has no application to

the case in hand, since the First Information Report has set criminal law in motion, based on *prima facie* material, which attracts offence under Indian Penal Code and Prevention of Corruption Act, 1988. It is not sheer violation of Medical Council of India Regulation, but the allegation indicates a larger conspiracy to cheat medical aspirants hailing throughout the nation and abuse of official position.

12. The learned Special Public Prosecutor for (CBI Cases) regarding the jurisdiction of CBI to investigate the case in Union territory of Pondicherry would submit that the said issue is no more *res integra*, in view of the judgment rendered by this Court in ***A.Ashok Anand v. State represented by the Deputy Superintendent of Police, CBI, ACB, Chennai dated 29.10.2014.***

13. The first information report, petition, judgment cited by the respective counsels perused.

14. At the out set, it is to be placed on record that the allegation found in the First Information Report is not sheer violation of Medical Council Code or Manual for the Council to take corrective measure. The allegations as found involves non-compliance of NEET procedure, cheating

and conspiracy between public servant and private individual to make unlawful gain by violating the Rule of Law. The Medical Council of India which is a Regulatory Body has no penal power to deal offences mentioned above. By no stretch of imagination, the Medical Council of India or any other Regulatory Body can substitute Indian Penal Code and special statutes like Prevention of Corruption Act, 1988. The submission put forth by the petitioners that for any violation in the admission process by the Institutes should be dealt with only under Medical Council of India Act and not under Indian Penal Code and Prevention of Corruption Act, is baseless and not on sound legal principle countenance.

15. While adverting to the next point raised by the petitioners regarding territorial jurisdiction of CBI. It is to be mentioned, the CBI is a Special Police Force constituted for investigation of certain offences in the Union Territories. It has come into existence by virtue of statute called the Delhi Special Police Establishment Act, 1946. It extends to the whole of India including the Union Territory of Pondicherry, which was acceded to India on 01.10.1963.

16. Under Section 2 of the Delhi Special Police Establishment Act, 1946, the Central Government has constituted CBI, which has power to

investigate such offences and arrest of person concerned in such offences and share all powers, duties, privileges and liabilities which Police Officers of that Union Territory have in connection with investigation of offences committed therein. Thus, it is amply clear that the Union Territory of Pondicherry which is Part of India falls within the jurisdiction and power of CBI constitutes under Section 2 of the Delhi Special Police Establishment Act, 1946. Under Section 2(2) of the Delhi Special Police Establishment Act, 1946, Pondicherry Police and the CBI has parallel to investigate the offence.

17. It is contented by the learned Senior Counsel appearing for the petitioners that though Pondicherry is classified under Part II of Schedule I as Union Territory, it is state in all sense and it has own police force to take care of its law and order, therefore, unless it gives consent for the CBI to exercise the power and jurisdiction, CBI cannot register a complaint for the alleged offence took place exclusively within the Union Territory.

18. With great respect, the said argument is untenable and fallacious. The First Information Report registered against the petitioners herein is for the offence under Indian Penal Code as well as Prevention of Corruption Act. The Prevention of Corruption Act extends to the whole of India except

(State of Jammu and Kashmir) and also applies to all citizens of India outside India. Section 2(2) of Delhi Special Police Establishment Act, 1946 confers parallel jurisdiction to CBI to investigate the offences in the Union Territories which includes Pondicherry. Section 3 of the Delhi Special Police Establishment Act, 1946 empowers the Central Government, by notification in the Official Gazette, specify the offences or classes of offences, which are to be investigated by the Delhi Special Police Establishment Act, 1946. The Prevention of Corruption Act, 1988 is one such Act which is notified by the Central Government in the Notification No: 228/88 AVD II, dated 07.09.1989 in exercise of the power conferred under the Delhi Special Police Establishment Act, 1946.

19. In the light of judgment rendered by the Constitution Bench of the Hon'ble Supreme Court in ***State of West Bengal and others v. Committee for protection of Democratic Rights, West Bengal and others*** reported in ***(2010)2 MLJ Cri.169 (SC)***, I am of the opinion that the submissions made by the learned Senior Counsel appearing for the petitioners needs no further deliberation except pointing out the source of power for CBI to register the case against the petitioners.

20. The Constitution Bench of the Hon'ble Supreme Court, while

discussion the power of the CBI constituted under the Delhi Special Police Establishment Act, 1946, had discussed threadbare the law and had arrived at conclusion that nothing contain in Section 5 deemed to enable any member of the Delhi Special Police Establishment Act, 1946 to exercise the power and jurisdiction in any area in a State not being a Union Territory or Railway area without consent of the Government of State. Therefore Section 5 and Section 6 of DSPE Act imposes restriction to the power of CBI only in respect of the State and not in respect of Union Territories.

21. Indian constitution makes a distinction between State and Union Territory. The very first Article of the Constitution reads as under:

"1. Name and territory of the Union:-

(1) India, that is Bharat, shall be a Union of States.

[(2) The States and the territories thereof shall be as specified in the First Schedule].

(3) The territory of India shall comprise-

(a) The territories of the States;

[(b) The Union territories specified in the First Schedule, and]

(c) Such other territories as may be acquired."

22. Under I Schedule, the States are listed separately and Union Territories are listed separately. Section 5 of the Delhi Special Police Establishment Act, 1946 also distinguishes "State" and "Union Territory".

While the consent of State Government is mandated under Section 6, no

such consent is required so far as the Union Territories are concerned. Above all, the Constitution Bench of the Hon'ble Supreme Court judgment in ***State of West Bengal and others v. Committee for Protection of Democratic Rights, West Bengal and Others*** reported in **(2010) 2 MLJ (Crl.) 169 (SC)** has held in para 44, Sections (Vi) and (Vii), which reads as under:

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

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

Union, cannot be read as restriction on the powers of the Constitutional Courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power of the federal structure. "

23. So, in the light of the above discussion, this Court holds that CBI has territorial jurisdiction over the Union Territory of Pondicherry by virtue of Section 2(2) and Section 5 of the Delhi Special Police Establishment Act, 1946. To register and investigate offences notified under Section 3 of the Act. The consent of the Union Territory is not required. Furthermore, the cognizable offence is brought to the notice of CBI, which has parallel jurisdiction to investigate notified offences in the Union Territory of Pondicherry and the same has been brought to the notice of this Court and this Court is satisfied that *prima facie* materials are available and CBI alone is competent and capable to investigate the complaint, which has wide inter state ramification in the administration of Medical Education. There is no necessity to invalidate the action, by misinterpreting the Provision of Law.

24. The petitioners herein are only brought under the scanner of investigation. They are not charged for any offence. If they have any valid defence that can establish the same by co-operating with the investigation.

25. In the result for the above said facts and circumstances, there is no necessity to put spokes in the wheel of investigation for the unsustainable reasons pleaded by the petitioners. Hence, **this Criminal Original Petition is dismissed**. Consequently, connected Miscellaneous Petition is also dismissed.

15.02.2018

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Internet:yes/no

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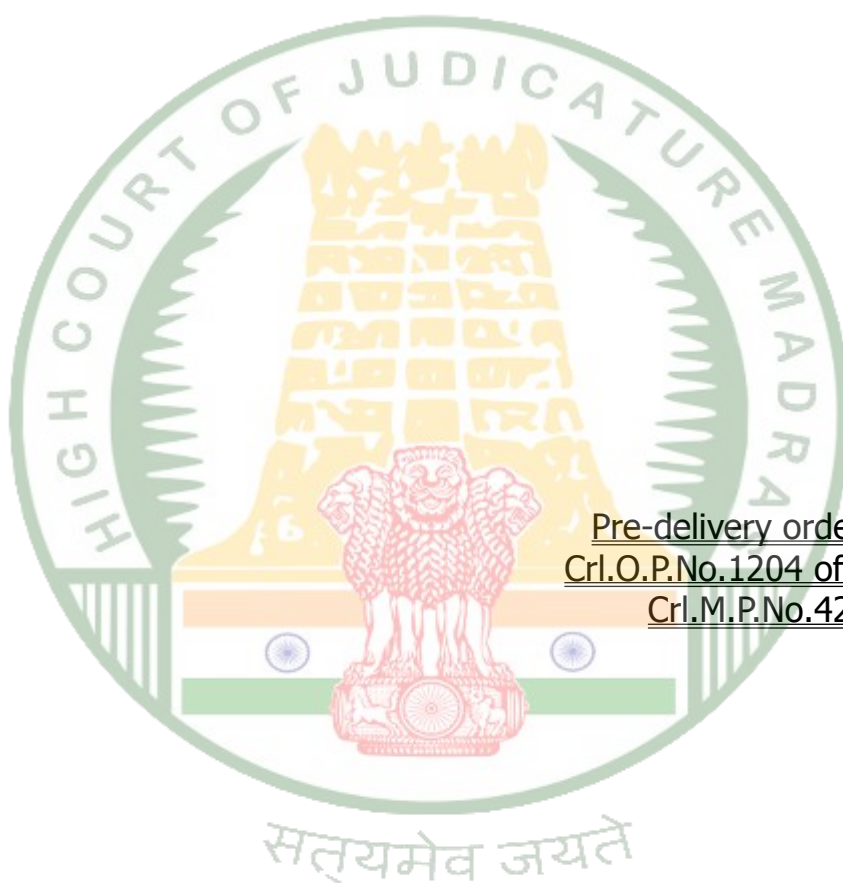
- 1.The Inspector of Police, SPE-CBI-ACB, Chennai.
- 2.The Special Public Prosecutor for CBI Cases, High Court, Chennai.



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Dr.G.Jayachandran,J.

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Pre-delivery order made in
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