THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 04.09.2018

\+ **W.P.(C) 3044/2016 & CM Nos. 12845/2016, 18410/2016 & 26211/2017**

WALMART INDIA PVT. LTD. ..... Petitioner

versus

CENTRAL VIGILANCE COMMISSION ..... Respondent

Advocates who appeared in this case:

For the Petitioner :Mr Kapil Sibal, Senior Advocate with Mr Siddharth Aggarwal, Mr Anuj Berry, Mr Mahak Bhatt, Mr Nikhil Pillai, Mr Adit Punj, Mr Raghav and Ms Reva Mann, Advocates.

For the Respondent :Ms Tatini Basu, Advocate for CVC.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. Walmart India Private Limited (hereafter 'WIPL') has filed the present petition, *inter alia*, praying that the inquiry being conducted by the Central Vigilance Commission (hereafter 'CVC') in terms of summons dated 29.10.2015 and letters dated 16.11.2015 and 29.03.2016 be set aside. The CVC had initiated an inquiry on the basis of a news report published in *The Wall Street Journal* on 19.10.2015 and in other newspapers, wherein it was reported that an investigation into the allegations of corruption regarding Walmart Stores Inc.'s operation in Mexico had found certain evidence of bribery in India.

2. The principal controversy involved in the present petition is whether the CVC has the jurisdiction to conduct an inquiry under Section 8 of the Central Vigilance Commission Act, 2003 (hereafter 'the CVC Act') on the basis of a newspaper report, which is bereft of any particulars.

Factual Background

3. WIPL is a company incorporated under the Companies Act, 1956 and owns and operates best price modern wholesale stores – twenty one in number – in nine states across India. WIPL is a wholly owned subsidiary of Walmart Stores Inc. (hereafter 'Walmart').

4. A widely read newspaper, *The Wall Street Journal*, carried an article published on 19.10.2015 bearing the headline "*Wal-Mart Bribery Probe Finds Few Signs of Major Misconduct in Mexico*". The said report indicated that a high profile federal probe had been undertaken into allegations of widespread corruption in Walmart's operations in Mexico but had found no major offence. However, the said article mentioned that the investigators had found evidence of bribery in India, centering on widespread but relatively small payments made to local officials there. It was further reported that the bribery unearthed by investigators in India "*involves thousands of small payments to low-level local officials to help move goods through customs or obtain real-estate permits. The vast majority of the suspicious payments were less than $200, and some were as low as $5*."

5. Immediately, thereafter, on 29.10.2015, the CVC issued summons addressed to Sh Krish Iyer, President and CEO of WIPL and Sh Rajneesh

Kumar, Vice-President and Head, Corporate Affairs of WIPL calling upon them to appear before the CVC on 16.11.2015 and provide details of the alleged bribery of officials in India by WIPL.

6. WIPL responded to the said summons by a letter dated 13.11.2015, *inter alia*, stating that the newspaper reports referred to in the summons did not "*provide any details as to the time period(s), public official(s), transaction(s), department(s), etc. in respect of any wrongdoing by a public official*". It was also pointed out that the newspaper report referred to low-level local officials, which would not fall within the jurisdiction of the CVC. Nonetheless, the concerned official of WIPL appeared before the CVC on 16.11.2015. The minutes of the said meeting were also subsequently forwarded to WIPL. The said minutes indicate that during the proceedings, the CVC directed the said officers to, *inter alia*, provide certain clarifications. The relevant extract of the said minutes indicating the information sought by the CVC is set out below:-

> "(ii) It has been pointed out that the clarification sought is as to whether Walmart India has any information from its parent Company regarding the investigation initiated by the US Department of Justice in regard to the alleged bribes paid in India by Walmart India. If so the details of all such correspondences in original to be submitted for perusal and return along with copies to be retained by the Commission.
>
> (iii) It has been pointed out that if Walmart Parent Company conducted any investigations regarding the nature of certain payments made in India, whether bribes or otherwise without the knowledge of Indian Company, it may be ascertained as to through which agency such enquiries regarding such payments including bribes have been made. If the above details are not available with the Indian

> Company they may request the Parent Company for copies of all these and furnish because the alleged offences of bribery have been committed in India and are triable in India. The details of all such correspondences with the Auditors/Investigators appointed by the Parent Company may be produced."

7. In respect of WIPL's query as to the nature of proceedings in the context of which summons had been issued, the CVC clarified that the summons were issued under Section 11 of the CVC Act. The representatives of WIPL appeared before the CVC on 23.11.2015 and submitted a letter indicating that WIPL was aware that US Department of Justice was conducting an investigation, which also included part of India operations. WIPL also informed the CVC that an independent internal inquiry in US was being led by law firms/legal advisors but WIPL personnel were not members of the investigating team. WIPL also sought further time to identify the relevant information and correspondence. Thereafter, WIPL forwarded a letter dated 15.12.2015 indicating that the management had made representations to the auditors on the basis of which the audited financial statements of WIPL for the year 2014 contained a note indicating that an investigation in regard to allegations of potential violation of the United States Foreign Corrupt Practices Act had commenced and was continuing. It was further stated therein that the impact of such investigations on the financial statements could not be predicted and, therefore, no adjustments were made in the financial statements. The representations made by the management to the auditors were also disclosed to the CVC.

8. The CVC issued further summons dated 29.02.2016 calling upon Mr Iyer, President and CEO of WIPL to appear before the CVC on 16.03.2016 and provide the following information:-

> (1) details of name and address of the then CFO of the Petitioner;
>
> (2) details of names and addresses of the third party intermediaries whose services were reportedly suspended by Walmart pending review;
>
> (3) the response received to the reference of WIPL to Walmart.

9. WIPL claims that its representatives appeared before the CVC on 16.03.2016 and provided all the information sought by the CVC. In the meanwhile, WIPL had also sent a letter to Walmart requesting for certain information. In response, WIPL was informed that Walmart was examining the contents of the same. At a hearing held on 16.03.2016, the CVC expressed its displeasure on account of non-receipt of the details of alleged bribery from Walmart. The CVC sent a letter dated 29.03.2016 regarding the proceedings held on 16.03.2016. In the said letter, certain derogatory observations had been made against WIPL and, further, WIPL was called upon to provide further information. The relevant extract of the proceedings held before the CVC on 16.03.2016, as reflected in the letter dated 29.03.2016, is set out below:-

> "3. The Commission observed that M/s WIPL were not serious and not providing complete information causing avoidable delays to the inquiry being conducted by the Commission in this matter. The Commission conveyed its concern to the CEO, WIPL of the casual approach being

> adopted by WIPL and its Principal, Walmart, US to submit the required information and complete details of the alleged bribery issues. CEO, WIPL was informed by the Commission that the Commission would be constrained to take serious note of such non- cooperation and may require registration of a criminal case for investigation as per applicable laws.
>
> 4. The Commission while conveying as above required the CEO, WIPL to inform the Principal as above and to ensure to furnish further information by the next date of hearing which includes:
>
> (a) Details of persons who have been involved in the internal investigation conducted by Walmart, US from outside India and within India and the period of such visit of persons and inquiry undertaken by them in India.
>
> (b) During the conduct of the reported internal inquires by Walmart the names and details of the persons, the investigation team met and examined, etc.
>
> (c) information / electronic data / details of the type of documents/information made available by WIPL to the investigation team."

10. WIPL objected to the observations made in the aforesaid proceedings. On receipt of the aforesaid letter dated 29.03.2016, WIPL sent a letter dated 04.04.2016, *inter alia*, objecting to the observations made therein. WIPL further contended that the nature of queries raised by the CVC therein indicated that it was conducting a fishing-and-roving inquiry by seeking information through vague and non-specific requests. WIPL, thereafter, filed the present writ petition challenging the proceedings being conducted by the CVC.

Submissions

11. Mr Sibal, learned Senior Counsel appearing for WIPL assailed the said proceedings, essentially, on three grounds. First, he submitted that the proceedings were being conducted by the CVC against WIPL, which was a private company and, therefore, such proceedings were without jurisdiction. He submitted that under Section 8 of the CVC Act, the jurisdiction of the CVC was to initiate proceedings only against public servants and, thus, could not extend against WIPL.

12. Second, he contended that the CVC was conducting a fishing-and-roving inquiry, as the newspaper reports on the basis of which the inquiry has been initiated did not contain any material particulars, which would warrant initiation of an inquiry under the CVC Act. It was further submitted that, therefore, the present query cannot be permitted to continue against WIPL.

13. Third, it was contended that the inquiry was without jurisdiction. It was submitted that the inquiry was initiated under Section 8(1)(d) of the CVC Act, which empowered the CVC to conduct a case inquiry or investigate into any complaint against any official belonging to such category of officials specified under Section 8(2) of the CVC Act. It was submitted that no such complaint had been made to the CVC and, therefore, the initiation of inquiry was without jurisdiction. He submitted that a newspaper report could not be construed as a complaint and the CVC had no jurisdiction to initiate a *suo moto* inquiry. It was further submitted that certain enactments permitted inquiries and investigations on receipt of any

information, and as an illustration, reference to Section 19 of the Competition Act, 2002 was made. The learned Senior Counsel also referred to Section 21(2) of the Chartered Accountants Act, 1949, which provides for inquiry on receipt of information or a complaint. It was submitted that a distinction must be drawn between information and a complaint and while a newspaper report may contain some information, it could not be construed as a complaint.

14. Lastly, he submitted that even if a newspaper report was taken as a complaint, the report in the present case was bereft of any particular details and, therefore, the said report did not have the necessary attributes of a complaint. It was submitted that a complaint has to be based on credible and verifiable information and must provide details of the correct application of fact. It was submitted that the article published in *The Wall Street Journal* had no details whatsoever which would be treated as a complaint.

15. Ms Basu, the learned counsel appearing for the respondent countered the submissions made on behalf of WIPL. She referred to the Vigilance Manual, 2005 (hereafter 'the CVC Manual'), which indicates that allegations appearing in the press as one of the sources of a complaint, which could be inquired into. She submitted that the CVC was set up by the Government of India by a resolution dated 11.02.1964 and in terms of Clause 2 of the said Resolution, the CVC had the jurisdiction to undertake any inquiry into any transaction in which a public servant was suspected or alleged to have acted for an improper purpose or in a corrupt manner. She submitted that by virtue of Section 24 of the CVC Act, the CVC continued

to discharge the functions as entrusted under the said resolution, which empowered the CVC to undertake any inquiry in respect of matters to which the powers of a union extend.

16. Mr Sibal countered the aforesaid submissions and submitted that the CVC Manual was only an executive instruction and did not have any statutory force. He relied on the decision of this Court in ***Sushil Kumar Gupta v. The Chairman, ECPF& Gratuity Trusts***: ***2014 (144) DRJ 237*** in support of the said contention. He further submitted that the CVC Manual could not expand the scope of Section 8(1)(d) of the CVC Act and the scope of the word 'complaint' could not be extended to include a mere information from newspaper reports. He submitted that the CVC could not conduct *suo moto* inquiry under Section 8(1)(d) of the CVC Act by expanding the scope of the word 'complaint' to include any information. It was next submitted that the respondent's reliance on the Resolution of the Government of India dated 11.02.1964 was misplaced. The said Resolution had been overridden by the CVC Act and, therefore, the functions to be performed by the CVC would necessarily have to be in conformity with the CVC Act and not as per the Resolution.

Reasons and Conclusion

17. At the outset, it is relevant to mention that there is no dispute that the inquiry instituted by the CVC is not against WIPL but in respect of misconduct on the part of certain unnamed public officials.

18. In the counter affidavit filed on behalf of the CVC, it is affirmed that officials of WIPL were summoned only to ascertain the facts relating to

alleged acts of bribery and corruption that had allegedly been taken place in India. It is also stated that the CVC does not propose to initiate any criminal action against the noticees mentioned in the letter dated 29.03.2016 and the said noticees are only required to provide complete information as is sought from them. The summons dated 29.10.2015 issued clearly indicate that the CVC had decided to inquire into the allegations of bribery in exercise of powers conferred under Clause (d) of sub-section (1) of Section 8 of the CVC Act. Thus, there can be no dispute that the scope of inquiry being conducted by the CVC is limited by the provisions of Section 8(1)(d) of the CVC Act. Thus, the contention that an inquiry is being conducted against WIPL, is unfounded. The fact that WIPL or its officials maybe involved in acts of bribery does not in any manner curtail the jurisdiction of the CVC to inquire or cause an inquiry or investigation to be made in respect of such offences. As long as the proceedings being conducted by the CVC fall within the scope of its functions, the same cannot be faulted.

19. The next question to be examined is whether the CVC is conducting a fishing-and-roving inquiry. Concededly, the US Department of Justice had initiated investigation including in some areas of operations in India. WIPL has further admitted that an independent inquiry was being conducted by law firms/legal advisors. The newspaper report that appeared in *The Wall Street Journal* indicates that the investigators had found evidence of bribery in India. It was also reported that thousands of small payments had been made to low level local officials to help move goods through customs or obtain real estate permits. It is also relevant to mention that WIPL is a wholly owned subsidiary of Walmart, and it has specifically

admitted in its annual reports that inquiries and investigations regarding allegations of potential violation; its audited financial statements for the year 2014 includes the following note:-

> "Wal-Mart Stores, Inc., which indirectly owns 100% equity shares of the Company, has reported that inquiries and/or investigations regarding allegations of potential violations of the United States Foreign Corrupt Practices Act ("the Act") have been commenced in a number of markets in which it operates, including India. Since the global investigations are continuing, the Company cannot predict at this time the outcome or impact of this investigation on the financial statements and hence the financial statements do not include any adjustments that might result from the outcome of this investigation."

20. It is also apparent from the above that the investigations being conducted could possibly have a financial impact on the financial statements, which have not been accounted for.

21. Viewed in its totality, it is apparent that there is sufficient material to suspect that bribes have been paid in India. There is also no denial that the investigations are being conducted at the instance of US Department of Justice at the instance of Walmart that have, in fact, revealed evidence of payment of bribes in India. In these circumstances, the fact that the names of officials/agencies that had paid the bribe or the names of officials who had accepted the same is not disclosed, does not mean that the inquiry being conducted is a mere fishing-and-roving inquiry. Once it is established that there are good grounds to suspect that the bribes were paid, the fact that other details are not known would not render an investigation into the

matter as a mere fishing-and-roving inquiry, as is contended on behalf of WIPL. Thus, the contention that the inquiry being conducted is arbitrary and unreasonable and falls foul of Article 14 of the Constitution of India is unmerited.

22. The next question to be answered is whether the proceedings initiated by the CVC are without jurisdiction, as they have been initiated based on a newspaper report. The learned counsel for the respondent had contended that the CVC was empowered to undertake an inquiry in terms of the Resolution dated 11.02.1964 passed by the Government of India and in terms of Section 24 of the CVC Act. She had contended that in terms of Section 24 of the CVC Act, the CVC continues to discharge its functions under the Resolution dated 11.02.1964. The Central Vigilance Commission was set up by the Government of India by a Resolution dated 11.02.1964 and in terms of Clause 2 of the said Resolution, the Central Vigilance Commission has the jurisdiction and powers in respect of all matters to which the executive power of the union extended. The relevant sub-clauses of Clause 2 of the Resolution relied upon by the respondent (Resolution dated 11.02.1964) are set down below:-

> "**Clause 2**. The Central Vigilance Commission will have jurisdiction and powers in respect of matters to which the executive power of the Union extends:
>
> (i) To undertake an inquiry into any transaction in which a public servant is suspected or alleged to have acted for an improper purpose or in a corrupt manner;
>
> ………….

(xii) the Commission may collect such statics and other information as may be necessary; ……………..”

23. Undoubtedly, sub-clause (i) of Clause 2 of the said Resolution is couched in wider terms than Section 8(1)(d) of the CVC Act. In this regard, the principal question to be addressed is whether the CVC continues to discharge functions under the said resolution as is contended on its behalf. At this stage, it is relevant to refer to Section 24 of the CVC Act. The same is set out below:-

> “**24. Provisions relating to existing Vigilance Commission**.—With effect from the Constitution of the Commission under sub-section (1) of section 3, the Central Vigilance Commission set up by the Resolution of the Government of India in the Ministry of Home Affairs No. 24/7/64-AVD, dated the 11th February, 1964 (hereafter referred to in this section as the existing Vigilance Commission) shall, insofar as its functions are not inconsistent with the provisions of this Act, continue to discharge the said functions and—
>
> (a) all actions and decisions taken by the Vigilance Commission insofar as such actions and decisions are relatable to the functions of the Commission constituted under this Act shall be deemed to have been taken by the Commission;
>
> (b) all proceedings pending before the Vigilance Commission, in so far as such proceedings relate to the functions of the Commission, shall be deemed to be transferred to the Commission and shall be dealt with in accordance with the provisions of this Act;
>
> (c) the employees of the Vigilance Commission shall be deemed to have become the employees of the Commission on the same terms and conditions;

(d) all the assets and liabilities of the Vigilance Commission shall be transferred to the new Commission."

24. A plain reading of Section 24 of the CVC Act indicates that it provides for a transition provision. The word 'Commission' as used in Section 24 of the CVC Act would have the same meaning as ascribed in Section 2(b) of the CVC Act, which would mean that the Central Vigilance Commission as constituted under Section 3(1) of the CVC Act. The expression 'Central Vigilance Commission' referred to under Section 24 of the CVC Act is used to refer to the Central Vigilance Commission set up by the Resolution of the Government of India dated 11.02.1964. The plain reading of Section 24 of the CVC Act indicates that the Central Vigilance Commission (which was the Vigilance Commission set up under the Resolution dated 11.02.1964) would continue to discharge its functions, which were not inconsistent with the provisions of the CVC Act. The reference to the Central Vigilance Commission under Section 24 of the CVC Act cannot be mistaken to be a reference to the CVC set up under Section 3(1) of the CVC Act even though, in practical terms, at the material time, the Central Vigilance Commission setup under the Resolution dated 11.02.1964 may have been the same as constituted under Section 3(1) of the CVC Act. However, for the purposes of Section 24 of the CVC Act, clear distinction has been made by referring to the Central Vigilance Commission constituted under Section 3(1) of the CVC Act as 'the Commission' and the Central Vigilance Commission constituted under the Resolution dated 11.02.1964 as the Vigilance Commission or the 'existing Vigilance Commission'. If the said distinction is borne in mind, it is at once

clear that the functions that were being performed by the Central Vigilance Commission constituted under the Resolution dated 11.02.1964 would continue to be discharged by that body and, by virtue of Section 24(a) of the CVC Act, all the decisions and actions taken by that Commission would be deemed to have been taken by the CVC as constituted under Section 3(1) of the CVC Act. The said provision by its very nature is transitory. It is not in dispute that the CVC now constituted is in terms of Section 3(1) of the CVC Act and there is no Central Vigilance Commission constituted under the Resolution dated 11.02.1964. The provision of Section 24 of the CVC Act have, thus, worked itself out and any reference to the Resolution dated 11.02.1964 to now justify the exercise of powers by the Commission is wholly unsustainable.

25. It is also relevant to mention that although oral submissions were made to justify the exercise of jurisdiction in terms of Clause 2 of the Resolution dated 11.02.1964, the affidavit affirmed by the CVC has no reference to the said Resolution. In the counter affidavit, the case set up by the CVC is that it is exercising its jurisdiction under Section 8(1)(d) of the CVC Act. This is also inconformity with the summons issued by the CVC, which expressly state that the CVC is conducting investigation in terms of Section 8(1)(d) of the CVC Act. In view of the above, the only question that remains to be addressed is whether the present inquiry being conducted by the CVC falls within its jurisdiction as expressly provided under Section 8(1)(d) of the CVC Act.

26. At this stage, it would be relevant to refer to Section 8 of the CVC Act which is set out below:-

"**8. Functions and powers of Central Vigilance Commission.**—(1) The functions and powers of the Commission shall be to—

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

(b) give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1946 (25 of 1946): Provided that while exercising the powers of superintendence under clause (a) or giving directions under this clause, the Commission shall not exercise powers in such a manner so as to require the Delhi Special Police Establishment to investigate or dispose of any case in a particular manner;

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

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

(e) review the progress of investigations conducted by the Delhi Special Police Establishment into offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) or the public servant may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

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

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

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

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

(2) The persons referred to in clause (d) of sub-section (1) are as follows:-

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

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

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

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

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

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

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

27. A plain reading of Clauses (a) and (b) of Section 8(1) of the CVC Act indicates that the CVC is charged with the function to exercise superintendence over the functioning of the Delhi Special Police Establishment insofar as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988. The CVC is also empowered to give directions to the Delhi Special Police Establishment for the purposes of discharging the responsibility entrusted to it. In terms of Clause (e) of Section 8(1) of the CVC Act, the CVC is required to review the progress of the investigations conducted by the Delhi Special Police Establishment in relation to the offences alleged to have been committed under the Prevention of Corruption Act, 1988. In terms of Clause (f) of Section 8(1) of the CVC Act, the CVC is required to review progress of the applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988. In terms of Clause (g) of Section 8(1) of the CVC Act, the CVC is also required to tender advice to Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government in regard to such matters as may be referred to it by that Government or the concerned entity. The CVC also exercises superintendence over the vigilance of administration of various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government.

28. In terms of Clauses (c) and (d) of Section 8(1) of the CVC Act, it is expressly provided that the functions and powers of the CVC would also be to inquire or cause an inquiry or investigation to be made in respect of allegations that a public servant, being an employee of the Central Government or corporations established by or under any Central Act, government company, society and any local authority owned or controlled by that Government, has committed an offence under the Prevention of Corruption Act, 1988 or an offence with which a public servant may, under the Code of Criminal Procedure, 1973 be charged at the same trial.

29. In terms of Clause (c) of Section 8(1) of the CVC Act, such inquiry or investigation has to be conducted on a reference made by the Central Government. However, in terms of Clause (d) of Section 8(1) of the CVC Act, such inquiry has to be made *"into any complaint against any official belonging to such category of officials specified under Section 8(2) of the CVC Act"*. It is clear from the language of the aforesaid provisions that whereas in case of reference by the Central Government, the CVC has the function and power to inquire into the allegations against any employee of the Central Government or the entities or the specified entities; its jurisdiction to inquire into a complaint under Section 8(1)(d) of the CVC Act is limited only against officials as specified under Section 8(2) of the CVC Act: (a) members of All-India Services serving in connection with the affairs of the Union and Group 'A' officers of the Central Government; (b) such level of officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government as may be specified by a

notification in the official gazette; and (c) members of Group B, Group C and Group D services of the Central Government and/or such level of officials or staff of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as may be notified in a notification made in that behalf provided that a reference has been made by the Lokpal under Section 20(1) of the Lokpal and Lokayuktas Act, 2013.

30. Thus, the central question to be answered in this case is whether a newspaper report can be construed to mean a complaint against any person belonging to all-India services serving in connection with the affairs of the Union and Group 'A' officers of the Central Government. The newspaper reports do not refer to persons belonging to All India Services or Group A Officers.

31. The term 'complaint' has been construed differently in the context of various enactments. In context of the Code of Criminal Procedure, 1973, a complaint would mean any allegation made orally or in writing to a Magistrate with a view to taking action under the Code that some person whether known or unknown has committed an offence. In the context of the Income Tax Ombudsman Guidelines, 2006, a complaint is defined to mean a representation in writing or through electronic means containing an administrative grievance alleging deficiency in working of the Income Tax Department. Section (2)(1)(c) of the Consumer Protection Act, 1986 defines a complaint to mean any allegation made in writing by a complainant that (i) as a result of any unfair trade practice adopted by any trader, the complainant has suffered loss or damage; (ii) the goods

mentioned in the complaint suffer from one or more defects; (iii) the services mentioned in the complaint suffer from deficiency in any respect; (iv) a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods, with a view to obtaining any relief provided by or under the Act.

32. In ***P. Ramanatha Aiyar's*** in ***The Major Law Lexicon***, ***4th Edition 2010***, a complaint is defined as under:-

> "COMPLAINT is an allegation that a wrong has been done or a grievance suffered. This term is most generally used in law with reference to criminal Courts to describe the mode in which proceedings are to be instituted. The complaint need not be either in writing or on oath, unless required to be so by the particular enactment upon which it is framed.
>
> It is form of legal process which consists of a formal allegation or charge against a party, made or presented to the appropriate Court or officer, as for a wrong done or a crime committed; in the latter case generally under oath.
>
> In civil proceedings, the first pleading of plaintiff, setting out the facts on which the cause of action is based."

33. Thus, the expression 'complaint', as commonly understood, would require a statement indicating a formal allegation to be lodged. It would be necessary that the complaint be moved by a complainant. The expression 'complaint' cannot, as commonly understood, extend to include a *suo moto* action based on information or knowledge gathered. A newspaper report is,

at best, a source of information; it is not a complaint made to the CVC. The learned Senior Counsel appearing for WIPL had also referred to Section 19(1)(a) of the Competition Act, 2002, which was subsequently amended by the Competition Amendment Act, 2007. The provision, as originally enacted, provided for an inquiry "on receipt of a complaint". This was amended by the Competition Amendment Act, 2007 to provide for an inquiry "on receipt of information". The explanation provided for the legislative amendment was to the effect that the term 'information' is wider. The notes to clauses of the Competition Amendment Act, 2007 expressly state that the amendment enables the Competition Commission of India to inquire on the receipt of any information instead of a receipt of only complaints. A plain reading of the definitions of the word 'complaint' enacted under various enactments indicates a common thread that runs through all the definitions; that is, in order to be construed as a complaint, it must mean an allegation made by a complainant.

34. In view of the above, this Court finds it difficult to accept that the word 'complaint' as used in Section 8(1)(d) of the CVC Act would also take within its sweep any information that may be gathered by the CVC of its own accord from various sources.

35. It is also apparent from the plain reading of Clause (c) of Section 8(1) of the CVC Act that an inquiry can be conducted against any public servant on a reference by the Central Government. However, in terms of Clause (d) of Section 8(1) of the CVC Act, an inquiry can be conducted on complaint, albeit, only against officers as specified under Section 8(2) of

the CVC Act. There is no power conferred on the CVC to *suo moto* institute an inquiry and investigation without any complaint being lodged.

36. It is also apparent from the plain language of Section 8(1)(d) of the CVC Act, the complaint must be specific; it must allege that the official belonging to such category of officials specified in sub-section (2), has committed an offence under the Prevention of Corruption Act, 1988 (49 of 1988) and an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial. The use of the word 'he' in clause (d) of Section 8(1) of the CVC Act also makes it clear that the allegations in the complaint must be against only persons specified under Section 8(2) of the CVC Act.

37. The learned counsel for the respondent has relied upon paragraph 3.1 of the CVC Manual which reads as under:-

> "3.1 Receipt of information about corruption, malpractice or misconduct on the part of public servants, from whatever source, would be termed as a complaint."

38. She submitted that in terms of Clause (i) of Paragraph 3.2.1 of the CVC Manual, complaints and allegations appearing in the press would also be the source of receipt of information and, therefore, the newspaper report would fall within the scope of a complaint.

39. Concededly, the CVC Manual is not a statutory manual but has been published by the CVC itself as a ready reference book to be used by officers involved in the vigilance administration. The foreword to the CVC Manual also expressly states that it should not be construed as a substitute

for reference to the concerned Rules and Orders issued by the Government. The CVC Manual is an internal document and cannot be used to interpret the provisions of the CVC Act. A Coordinate Bench of this Court in ***Sushil Kumar Gupta v. The Chairman ECPF and gratuity Trusts & Anr*** (*supra*) has also held that the provision of the CVC Manual does not have a statutory force and nothing has been indicated to show that the CVC Manual as been framed in furtherance of the powers invested in the CVC under the CVC Act.

40. Plainly, an authority, which is constituted under an Act cannot by an administrative order expand its jurisdiction as conferred under the Statute. The CVC Act has expressly charged the CVC to make inquiries in a complaint in terms of Section 8(1)(d) of the CVC Act and the CVC cannot expand its jurisdiction to also conduct inquiries on information gathered from various sources.

41. It is seen that wherever the Parliament desired to confer *suo moto* powers on authorities, it has expressly provided for the same. Under the Chartered Accountants Act, 1949, Section 21(1) provides that the Council can initiate inquiry by establishing a Disciplinary Directorate for making investigations *"in respect of any information or complaint received by it"*. Similarly, Section 19(1) of the Competition Act, 2002 (as amended in 2007) specifically provides that the Competition Commission of India can inquire into an alleged anti-competitive agreement or any abuse of dominance position by an enterprise *"either on its own motion or on receipt of any information in such manner"*. Likewise, Section 9 of the Goa Lokayukta Act, 2011 also bestows power on the Lokayukta or Up-

Lokayukta to investigate into any allegation against any public functionary *"either suo motu or on a complaint made to him"*. The Advocates Act, 1961 also has provisions for conducting *suo motu* inquiry. Section 35 and 36 of the Advocates Act, 1961 specifically provides that the Bar Council of India, *"on receipt of a complaint or otherwise"*, can refer the case of an advocate to its Disciplinary Committee for an alleged misconduct. The Delhi Lokpal and Lokayukta Act, 1995 is also a legislation on point. Section 7 of the Delhi Lokpal and Lokayukta Act, 1995 provides for the Lokayukta or Up-Lokayukta to hold inquiry by utilizing the services of any person/agency *suo motu* into an allegation made against a public functionary.

42. It is also relevant to note that in terms of Section 8(1)(d) of the CVC Act, the CVC can inquire or cause an inquiry or an investigation to be made against officials belonging to such category of officials specified in Section 8(2) of the CVC Act. Clause (c) of Section 8(2) of the CVC Act expressly provides that on a reference made by the Lokpal, the persons referred to in Section 8(1)(d) of the CVC Act would also include Group B, Group C, Group D and other employees as referred therein.

43. Thus, the CVC would have the jurisdiction to investigate into allegation against (i) members of Group B, Group C and Group D services of the Central Government; and (ii) such level officials or staff of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf. However, inquiries in respect of

such persons can only be made on a reference by a Lokpal and not *suo moto* or a complaint by any other person.

44. In view of the above, the newspaper report cannot be construed as a complaint for the purposes of conducting the inquiry under Section 8(1)(d) of the CVC Act, for two reasons: first of all, it is not a complaint but an information; and second, it also does not allege that any employee as specified under Section 8(2) of the CVC Act has committed an offence under the Prevention of Corruption Act, 1988.

45. The petition is, accordingly, allowed and the inquiry being conducted by the CVC on the basis of the newspaper report is set aside. It is, however, clarified that the Central Government is not precluded from making a reference on the basis of such information and the CVC would be required to continue such inquiry, on such reference being made. All the pending applications are also disposed of.

46. The parties are left to bear their own costs.

VIBHU BAKHRU, J

September 4, 2018
pkv