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HIGH COURT OF CHHATTISGARH, BILASPUROrder reserved on 05-02-2020Order delivered on 06-02-2020REVP No. 43 of 2020

1. Satish Pandey S/o R.S. Pandey Aged About 60 Years R/o E-1/3, Devendra Nagar, Raipur, Tahsil And District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Applicant

Versus

1. Union Of India Through Home Secretary, Ministry Of Home Affairs, (India), North Block, Cabinet Secretariat, Raisina Hills New Delhi (New Delhi)., District : New Delhi, Delhi
2. Secretary (Personnel) (DOPT) Department Of Personnel And Training, North Block, New Delhi 110001., District : New Delhi, Delhi
3. The Secretary, Ministry Of Human Resources And Development (M H R D), Govt. Of India, Shastri Bhavan, New Delhi 110001., District : New Delhi, Delhi
4. State Of Chhattisgarh Through Chief Secretary, Mahanadi Bhawan, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
5. Central Bureau Of Investigation (C B I) Bhilai, Chhattisgarh, Through The Dy.S.P. Bhilai, District Durg Chhattisgarh., District : Durg, Chhattisgarh
6. Secretary To Honble Minister, Women And Child Welfare Department, Through Chief Secretary Mahanadi Bhavan, New Raipur Chhattisgarh, District : Raipur, Chhattisgarh
7. The Secretary, Nagriya Prashashan Avm Vikash Vibhag, Indravati Bhavan, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
8. The Secretary, Panchayat Avm Gramin Vikash Vibhag, Mahanadi Bhavan, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh

9. The Secretary, School Shiksha Vibhag, Mahanadi Bhavan, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
10. The Secretary, Samaj Kalyan Vibhag, Mahanadi Bhawan, New Raipur Chhattisgarh, District : Raipur, Chhattisgarh
11. The Secretary, Lok Swasthya Avm Pariwar Kalyan Vibhag, Mahanadi Bhawan, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
12. The Secretary, Vitt Vibhag, Mahanadi Bhavan, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
13. The Director, Panchayat Avm Samaj Sewa Vibhag, Mahanadi Bhavan, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
14. Smt. Renuka Singh, W/o Phool Singh, Ex - Minister Women And Child Welfare Department, Through Chief Secretary, Mahanadi Bhavan, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
15. Shri Vivek Dhand, S/o Shri S.P. Dhand, Through Chief Secretary, Mahanadi Bhavan, New Raipur Chhattisgarh, District : Raipur, Chhattisgarh
16. M.K. Raut, S/o Shri V.T. Raut, Through Chief Secretary, Mahanadi Bhavan, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
17. Shri Alok Shukla, S/o Late Shri T.C. Shukla, Through Chief Secretary, Mahanadi Bhavan, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
18. Shri Sunil Kujur, S/o Shri P. Kujur, Through Chief Secretary, Mahanadi Bhavan, New Raipur Chhattisgarh, District : Raipur, Chhattisgarh
19. Shri B.L. Agrawal, S/o Shri R.K. Agrawal, Through Chief Secretary, Mahanadi Bhavan, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
20. Shri P.P. Soti, S/o Shri P.D. Soti, Through Chief Secretary, Mahanadi Bhavan, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh

21. Shri Rajesh Tiwari, Director, State Resource Center (Rajya Shrot Nishakt Jan Sansthan), Samaj Kalyan Parisar, Mana, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
22. Shri Ashok Tiwari, Director, State Resource Center Rajya Shrot Nishakt Jan Sansthan, Samaj Kalyan Parisar, Mana, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
23. Shri Herman Khalkho Dy. Director, Social Welfare Department, Through Chief Secretary, Mahanadi Bhavan, New Raipur Chhattisgarh, District : Raipur, Chhattisgarh
24. Shri M.L. Pandey, Addl. Director, Social Welfare Department, Through Chief Secretary, Mahanadi Bhawan, New Raipur Chhattisgarh, District : Raipur, Chhattisgarh
25. Shri Pankaj Verma, Dy. Director, Social Welfare Department, Through Chief Secretary, Mahanadi Bhavan, New Raipur Chhattisgarh, District : Raipur, Chhattisgarh
26. The Treasurer, District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
27. The Registrar, Firms And Societies, Indrawati Bhavan, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
28. The Branch Manager, State Bank Of India, Branch, Moti Bagh, Raipur Chhattisgarh, District : Raipur, Chhattisgarh
29. The Branch Manager, State Bank Of India, Branch New Mantralay Branch, New Raipur Chhattisgarh, District : Raipur, Chhattisgarh
30. State Resource Center (Rajya Shrot Nishakt Jan Sansthan) Samaj Kalyan Parisar, Mana District Raipur Chhattisgarh, Through Its Director Samaj Kalyan Parisar, Mana District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
31. Kundan Singh Thakur S/o Shri Hari Singh Thakur, Aged About 43 Years R/o House No. 3, Near Khallari Mata Mandir, Police Station City, Kushalpur, Chouck, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

----- Respondents

For Applicant	Shri Avi Singh & Shri Aayush Bhatia, Adv.
For UOI/CBI	Shri B. Gopa Kumar, Adv
For State	Shri Mateen Siddiqui, Dy. AG
For Writ Petitioner	Shri Devershi Thakur, Adv.

And

REVP No. 49 of 2020

1. B.L. Agrawal S/o Ram Kumar Agrawal Aged About 54 Years R/o Samarth, Opp. United Timbers, New Timber Market, Fafadih, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Applicant

Versus

1. Kundan Singh Thakur S/o Shri Hari Singh Thakur Aged About 43 Years R/o House No. 3, Near Khallari Mata Mandir, Police Station City, Kushalpur Chouck, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Union Of India Through Home Secretary, Ministry Of Home Affairs (India), North Block, Cabinet Secretariat, Raisina Hills, New Delhi, District : Delhi
3. Secretary (Personnel) (DOPT) Department Of Personnel Training, North Block, New Delhi, District : New Delhi, Delhi
4. The Secretary Ministry Of Human Resources And Development (M H R D), Govt. Of India, Shastri Bhavan, New Delhi., District : New Delhi, Delhi
5. State Of Chhattisgarh Through Chief Secretary, Mahanadi Bhawan, Naya Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
6. Central Bureau Of Investigation (CBI) Bhilai, Chhattisgarh, Through The Dy. S.P. Bhilai, District Durg Chhattisgarh, District : Durg, Chhattisgarh

7. Secretary To Honble Minister Women And Child Welfare Department, Through Chief Secretary, Mahanadi Bhawan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
8. The Secretary Nagriya Prashashan Avm Vikas Vibhag, Indravati Bhawan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
9. The Secretary Panchayat Avm Gramin Vikas Vibhag, Indravati Bhawan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
10. The Secretary School Shiksha Vibhag, Mahanadi Bhawan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
11. The Secretary School Kalyan Vibhag, Mahanadi Bhawan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
12. The Secretary Lok Swasthya Avm Pariwar Kalyan Vibhag, Mahanadi Bhawan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
13. The Secetary Vitt Vibhag, Mahanadi Bhawan, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
14. The Driector Panchayat Avm Samaj Sewa Vibhag, Mahanadi Bhawan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
15. Smt. Renuka Singh W/o Phool Singh, Ex - Minister Women And Child Welfare Department, Through Chief Secretary, Mahanadi Bhawan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
16. Shri Vivek Dhand S/o Shri S.P. Dhand, Through Chief Secretary, Mahanadi Bhawan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
17. M.K. Raut S/o Shri V.T. Raut, Through Chief Secretary, Mahanadi Bhawan, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
18. Shri Alok Shukla S/o Late Shri T.C. Shukla, Through Chief Secretary, Mahanadi Bhawan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

19. Shri Sunil Kujur S/o Shri P. Kujur, Through Chief Secretary, Mahanadi Bhawan, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
20. Shri Satish Pandey S/o Shri R.S. Pandey, Through Chief Secretary, Mahanadi Bhawan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
21. Shri P.P. Soti S/o P.D. Poti, Through Chief Secretary, Mahanadi Bhawan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
22. Shri Rajesh Tiwari Director, State Resource Centre (Rajya Shrot Nishakt Jan Sansthan), Samaj Kalyan Parisar, Mana, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
23. Shri Ashok Tiwari Director, State Resource Centre (Rajya Shrot Nishakt Jan Sansthan), Samaj Kalyan Parisar, Mana, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
24. Shri Heman Khalkho Dy. Director, Social Welfare Department, Through Chief Secretary, Mahanadi Bhawan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
25. Shri M.L. Pandey Addl. Director, Social Welfare Department, Through Chief Secretary, Mahanadi Bhawan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
26. Shri Pankaj Verma Dy. Social Welfare Department, Through Chief Secretary, Mahanadi Bhawan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
27. The Treasurer District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
28. The Registrar Firms And Societies, Indravati Bhawan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
29. The Branch Manager State Bank Of India, Branch, Moti Bagh, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
30. The Branch Manager State Bank Of India, Branch, New Mantralya Branch, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

31. State Resource Centre (Rajya Shrot Nishakt Jan Sansthan)
Samaj Kalyan Parisar, Mana, District Raipur, Chhattisgarh.
Through Its Director, Samaj Kalyan Parisar, Mana District
Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

----- Respondents

For Applicant	Dr. N.K. Shukla, Sr. Adv. with Shri Rahul Tamaskar, Advocate
For UOI/CBI	Shri B. Gopa Kumar, Adv
For State	Shri Mateen Siddiqui, Dy. AG
For Writ Petitioner	Shri Devershi Thakur, Adv.

Hon'ble Shri Prashant Kumar Mishra, J.

Hon'ble Shri Parth Prateem Sahu, J.

CAV Order

The following order of the Court was passed by
Prashant Kumar Mishra, J.

- These two review applications have been preferred seeking review of our order dated 30-1-2020 passed in WP PIL No.53 of 2018 (***Kundan Singh Thakur v Union of India & Others***) directing the Central Bureau of Investigation (for short 'the CBI') to register an FIR (First Information Report) within one week; seize the relevant original records from the concerned department, organization and offices throughout the State within 15 days; and thereafter complete fair and independent investigation at the earliest.

2. The issue raised in the Writ Petition (Cr.), later converted into a Public Interest Litigation (for short 'PIL') under the orders of the Court, concerns misappropriation of funds at the State Disabled Resource Center (राज्य श्रोत निःशक्त जन संस्थान), referred as 'SRC' in the main order.
3. In the Writ Petition (PIL) allegations were levelled that whopping amount towards payment of salary was withdrawn by showing them to be working at the Physical Referral Rehabilitation Centre (for short 'the PRRC'). It was alleged that the PRRC is running only on papers without there being any visible tangible activity. Employees were shown to be working, but no recruitment process through advertisement or otherwise was ever drawn nor any hospital for disabled is established, nor any employees were ever appointed.
4. In course of hearing of the writ petition, the PIL Court passed the following order on 30-7-2018 :

Heard.

Respondent No.4 – The Chief Secretary, Government of Chhattisgarh will hold an independent enquiry into the allegations made in this writ petition. If what has been stated therein are true and correct then it is a serious issue, which

requires a deeper look, and remedial measures would be taken including fixing responsibility or else, if there are certain misgivings due to half- baked inputs.

Clarity must emerge from the report as to the working and withdrawal of funds which are being made through an organisation State Resource Center (SRC) or such other organisations involved in such activities.

The Court would expect an affidavit at the level of the Chief Secretary within a period of four weeks.

Post it after four week.

5. After the above order was passed a report was submitted on 1-10-2018 supported with affidavit of Smt. Chameli Chandrakar, District Rehabilitation Officer, Social Welfare Department, Bilaspur, along with an enquiry report. Thus, the Chief Secretary did not file any affidavit as directed by the Court on 30-7-2018. This Court thereafter passed an order on 4-10-2018 directing the State to file further affidavit as to what follow-up action has been taken on all the fronts. Thereafter, on 7-12-2018 the PIL Court desired to know as to under what circumstances affidavit of the State could not be filed in terms of the previous direction. On 18-1-2019 State again sought time to file affidavit in compliance of the Court's

previous order. Thus, by way of last indulgence State was allowed additional time on 20-2-2019.

6. On 2-10-2018 the Chief Secretary to the Government of Chhattisgarh filed an affidavit annexing the same report, which was earlier filed by Smt. Chameli Chandrakar, District Rehabilitation Officer, Social Welfare Department, Bilaspur.
7. Show cause notices issued to the employees namely; Rajesh Tiwari, Pankaj Verma, Herman Khalkho & Anil Soumitra were also part of the affidavit of Smt. Chameli Chandrakar. Additional affidavit was filed by Smt. Chameli Chandrakar on 13-3-2019.
8. Based on the allegation made in the Writ Petition (PIL) and the report submitted by the Chief Secretary to the Government of Chhattisgarh and the Officer-in-Charge (OIC) of the case this Court found, *prima facie*, substance in the allegations concerning misappropriation and siphoning of public funds. Since after issuance of show cause notices to four officers the State did nothing to unearth the financial irregularity to ascertain the persons who have misappropriated public funds and the officers arrayed as respondents being senior officers this Court deemed it appropriate to handover the matter to the CBI for registration of FIR and investigation.

9. Shri Avi Singh & Shri Aayush Bhatia, Advocates for the applicant in Review Petition No.43 of 2020 and Dr. N.K. Shukla, Sr. Advocate with Shri Rahul Tamaskar, Advocate for the applicant in Review Petition No.49 of 2020 have argued at length.
10. Learned counsels appearing for the applicants would mainly urge that the writ petitioner (Kundan Singh Thakur) has not approached the Court with clean hands and rule of *audi alteram partem* requires that the applicants should have been issued notices and heard by the Writ Court before handing the matter to the CBI. Learned counsel would also argue that the defalcated amount has been exaggerated so that a petty case is given shape of a scam.
11. Shri Avi Singh, learned counsel appearing for the applicant (Satish Pandey) in Review Petition No.43 of 2020, would refer to the provisions of Section 17A of the Prevention of Corruption Act, 1988 (for short 'the PC Act'), to argue that no investigation is permissible without sanction of the appropriate Government.
12. Dr. N.K. Shukla, learned senior counsel appearing for the applicant in Review Petition No.49 of 2020 (B.L. Agrawal), would argue that the applicant was the Secretary of the

concerned Department only for some time in the year 2004-05 and has thereafter retired in 2017. Thus, the allegations against him are wholly unfounded.

13. To buttress their contentions, learned counsel for the applicants would place reliance upon the decisions rendered in *P.N. Eswara Iyer and Others v Registrar, Supreme Court of India*¹, *Sakiri Vasu v State of Uttar Pradesh and Others*², *Divine Retreat Centre v State of Kerala and Others*³, *Raghu Raj Singh Rousha v Shivam Sundaram Promoters Private Limited and Another*⁴, *Ms Mayawati v Union of India and Others*⁵, *Union of India v Sandur Manganese and Iron Ores Limited and Others*⁶, *Anil Kumar and Others v M.K. Aiyappa and Another*⁷, *L. Narayana Swamy v State of Karnataka and Others*⁸ and *Yashwant Sinha and Others v Central Bureau of Investigation, through its Director and Another*⁹.

14. In course of hearing, Shri B. Gopa Kumar, learned counsel appearing for the UOI & CBI, would inform that the CBI has already registered an FIR bearing No.RC 222/2020 A 0001 at

1 (1980) 4 SCC 680

2 (2008) 2 SCC 409

3 (2008) 3 SCC 542

4 (2009) 2 SCC 363

5 (2012) 8 SCC 106

6 (2013) 8 SCC 337

7 (2013) 10 SCC 705

8 (2016) 9 SCC 598

9 2019 SCC OnLine SC 1460

AC-IV, Branch Bhopal *against unknown members/office bearers of SRC and PRRC, unknown public servants and others* for offence under Section 120-B read with Sections 409, 420, 467, 468 & 471 of the Indian Penal Code (for short 'the IPC') and under Section 13 (2) read with Section 13 (1) (d) of the PC Act.

15. In our order under review we have clearly mentioned that the petition has been preferred seeking an appropriate writ/order/direction to the CBI to register an FIR and investigate the matter; as also for a direction to the respondent No.2 (therein) Department of Personnel and Training (DoPT), Government of India, for initiating departmental proceedings against the respondents No.15 to 26 therein. Thus, neither the writ petitioner has sought registration of FIR against any particular officer nor we have issued any such direction in the operative part at para 24 of our order, which reads thus :

24. In the result, we dispose of the instant writ petition with the following directions :

- a) The CBI shall register an FIR within a period of one week from today.

b) The CBI shall seize the relevant original records from the concerned department, organization and offices throughout the State within 15 days from the date of registration of FIR.

c) The CBI shall make all possible endeavour to complete fair and independent investigation at the earliest.

d) It is made clear that in the event the CBI needs any further direction from this Court it would be at liberty to move necessary application in this regard.

16. The review petitions seem to have been filed on apprehension that since the applicants herein are arrayed as respondents in the WP (PIL) an FIR may be instantaneously registered against them, however, our order on this aspect is very clear and no further clarification is required in this regard.

17. It is the settled proposition of law that a prospective accused has no right of hearing and the rule of *audi alteram partem* does not apply at the stage of registration of FIR as held by the Full Bench of this Court in ***Dhananjay Kumar v State of Chhattisgarh & Others***¹⁰.

¹⁰ WPCR No.121 of 2017 (decided on 30-1-2020)

18. In *Dhananjay Kumar* (supra) the Full Bench has relied upon the principles of law laid down by the Supreme Court in *Union of India and Another v W.N. Chadha*¹¹ [popularly known as '*Bofors Case*'], *Narender G. Goel v State of Maharashtra and Another*¹², *Samaj Parivartan Samudaya and Others v State of Karnataka and Others*¹³, *Anju Chaudhary v State of Uttar Pradesh and Another*¹⁴ and *E. Sivakumar v Union of India and Others*¹⁵.
19. The issue as to whether before directing registration of FIR against unknown or prospective accused it is necessary to hear such person would arise only when specific direction is issued for registration of FIR against a particular individual. However, in the case at hand the direction is only to register the FIR and investigate the matter without referring to any particular respondent.
20. In so far as arguments based on Section 17A of the PC Act is concerned, suffice it would be to observe that the officers or employees who would eventually be charged of committing the offence is not yet known, therefore, the stage of application of Section 17A is not yet commenced. Even

11 1993 Supp (4) SCC 260

12 (2009) 6 SCC 65

13 (2012) 7 SCC 407

14 (2013) 6 SCC 384

15 (2018) 7 SCC 365

otherwise, the said provision would be attracted only when their act is found to be relatable to any recommendation made or decision taken by a public servant in discharge of his official functions or duties.

21. Amassing wealth by misappropriation or embezzlement is never considered to be in discharge of official duties. The provision (Section 17A of the PC Act) has been inserted only to provide protection to officers/public servants who discharge their official functions and/or duties with diligence, fairly, in an unbiased manner and to the best of their ability and judgment, however, it does not seek to protect any person who is involved in garnishing wealth by corrupt means. The decision rendered by the High Court of Delhi on this issue in ***Devender Kumar and Ors. v Central Bureau of Investigation and Ors.***¹⁶ is worth reference.
22. Again, the provision does not restrict High Court's power and jurisdiction under Article 226 of the Constitution of India to direct registration of FIR when, *prima facie*, the Court is satisfied that misuse, siphoning and misappropriation of public funds needs to be investigated.

23. Having appreciated the submissions, we are of the considered view that we have passed the order under review on satisfaction that the matter needs to be investigated by an independent agency. In fact, we have referred the matter to the CBI for the reason that the SRC was manned by officers at the level of the Chief Secretary and despite direction by the PIL Court the matter was not properly examined and effective action was not taken by the State authorities.
24. For the reasons stated hereinabove, in our considered view there is no error apparent on the face of record warranting exercise of review jurisdiction to review & recall the order dated 30-1-2020 passed in WP PIL No.53 of 2018.
25. As a sequel, both the review petitions, *sans substratum*, are liable to be and are hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Parth Prateem Sahu)
Judge