

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3793 OF 2021

The State of Maharashtra
through the Joint Secretary,
Home Department, having office at
Mantralaya, Mumbai- 400 032.

... Petitioner.

V/s.

1. Central Bureau of Investigation,
CGO Complex, Lodhi Road,
New Delhi- 110 003.
 2. Shri Subodh Kumar Jaiswal,
Director, Central Bureau of Investigation,
CGO Complex, Lodhi Road,
New Delhi- 110 003.
 3. Mukesh Kumar,
Deputy Superintendent of Police,
having his office at CBI Headquarters
Building, 8th Floor, 5-B, A Wing,
Lodhi Road, New Delhi- 110 003.
 4. The Director General of Police,
State of Maharashtra,
Maharashtra State Police Headquarters,
Shahid Bhagat Singh Marg,
Mumbai- 400 001.
 5. The Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai- 400 032.
- ... Respondents.

Mr. Darius Khambata, Senior Advocate with Mr. Ranbir Singh, Tushar Hathiramani with Mr. J.P. Yagnik, Assistant Public Prosecutor for the Petitioner.

Mr. Aman Lekhi, Additional Solicitor General with Mr. Anil Singh, Additional Solicitor General with Mr. Ritwiz Rishabh, Mr. Aniket Seth, Mr. Ujjwal Sinha, Mr. Aditya Thakkar, Mr. D.P. Singh and Ms. Smita Thakur for Respondent Nos. 1, 2 and 3.

Mr. Navroz Seervai, Senior Advocate with Ms. Prachi Tatake for Respondent Nos. 4 and 5.

CORAM : **NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.**

RESERVED ON : **26 November 2021.**

PRONOUNCED ON: **15 December 2021.**

JUDGMENT : (Per Nitin Jamdar)

Rule. Rule made returnable forthwith. Taken up for disposal.

2. The Petitioner- the state of Maharashtra, through its Home Department, has filed this Petition praying for the constitution of a Special Investigation Team to be monitored and thereafter directing the Respondent- Central Bureau of Investigation to hand over the investigation of the concerned FIR to the Special Investigation Team so constituted .

3. The Petitioner- the state of Maharashtra is represented through the Joint Secretary, Home Department. Respondent No.1 is the Central Bureau of Investigation. Respondent No.2- Mr Subodh Kumar Jaiswal is the Director of Respondent No.1. Respondent No.3- Mr Mukesh Kumar is the Deputy Superintendent of Police of Respondent No.1. Respondent No.4 is the Director-General of Police of the State of Maharashtra. Respondent No.5 is the Chief Secretary of the Government of Maharashtra. Respondent Nos.4 and 5 support the Petitioner in its cause.

4. Narration of facts in the Petition is as follows. The detailed factual backdrop relevant for this adjudication is narrated subsequently in the judgment.

5. On 20 March 2021, the erstwhile Police Commissioner of Mumbai- Mr Param Bir Singh, by letter dated 20 March 2021, levelled allegations of corruption against Mr Anil Deshmukh, Home Minister, Maharashtra State. A complaint was filed by one Dr.Jaishri Patil. A Public Interest Litigation No.6/2021 was filed by Mr Param Bir Singh pursuant to the allegations made against Mr Anil Deshmukh. The Division Bench of this Court, by order dated 5 April 2021 passed in PIL No.6/2021 and other connected matters, directed the Central Bureau of Investigation to initiate a preliminary inquiry in the complaint made by Dr. Patil in respect of the

allegations made against Mr. Anil Deshmukh, the then Home Minister. CBI carried out a preliminary inquiry on 21 April 2021 and registered an FIR Crime No.RC2232021A0003/CBI/AC-5/New Delhi (the FIR) against Mr Anil Deshmukh and other unknown persons. The FIR also included the allegation of illegal transfer and posting of police officers. On 3 May 2021, the State of Maharashtra filed Criminal Writ Petition No.1903/2021 for quashing the unnumbered paragraph-5 of the FIR dated 21 April 2021 relating to illegal transfers and postings of police officers. The writ petition was rejected by the Division Bench on 22 July 2021. The order of rejection was challenged by the State of Maharashtra in the Supreme Court in Special Leave Petition No.5563/2021 on 30 July 2021, and the Supreme Court dismissed it by order dated 18 August 2021. On 18 September 2021, Respondent No.3- Mr. Mukesh Kumar, Deputy Superintendent of Police, CBI issued a notice under section 160 of Code of Criminal Procedure, 1973 to Respondent No.4- Director General of Police and Respondent No.5- Chief Secretary requesting them to appear before him in connection with the FIR at New Delhi office on 22 and 23 September 2021. Respondent No.5 wrote to Respondent No.3 to provide him with the context and the questionnaire which need to be addressed, which was replied to by Respondent No.3 on 7 October 2021. On 18 September 2021, Respondent No.3 asked Respondent No.5 and 6 to join the investigation on 13 October 2021 at Mumbai. One more communication was issued. At this stage, the Petitioner filed the

present Petition on 12 October 2021. This is the factual backdrop narrated in the petition.

6. The Petition is filed on the ground that Respondent No.2- Mr Jaiswal, who is the Director of CBI, was, at the relevant time, heading the Maharashtra Police Force and was directly involved in deciding and implementing transfers and postings of Police officers and, therefore, no fair and impartial investigation can take place when the Respondent No.2 is at the helm of affairs of CBI. The Petitioner also made a grievance in the Petition that the CBI and its officers are harassing senior-most officers of the State and, therefore, the intervention of this Court is required. Prayer is sought for the constitution of a Special Investigating Team to be monitored on the ground that it is necessary to conduct a fair and impartial investigation.

7. Reply affidavit is filed on behalf of Respondent CBI. Apart from dealing with other contentions of the Petitioner, the Respondent- CBI has also questioned the locus of the Petitioner and contended that the conduct of the Petitioner dis-entitles it from seeking any equitable relief. A Rejoinder is filed by the Petitioner.

8. We have heard Mr Darius Khambata, learned Senior Advocate for the Petitioner; Mr Aman Lekhi and Mr Anil C. Singh, learned Additional Solicitor Generals for Respondent Nos.1, 2 and

3; and Mr Navroz Seervai, Senior Advocate for Respondent Nos.4 and 5.

9. Though Respondent Nos.4 and 5 have been joined in this Petition by their designation, the learned Senior Advocates for the Petitioner and the Respondent Nos.4 and 5, and the learned ASG have referred to them by names that is Mr. Sanjay Pandey- the Respondent No.4 and Mr Sitaram Kunte- the Respondent No.5. Therefore, we will also refer to them by their names at the relevant places.

10. Summary of propositions advanced by Mr Khambata, learned Senior Advocate on behalf of the Petitioner in support of the Petition is as follows: By order dated 5 April 2021 in Public Interest Litigation No.6/2021 and other matters, after observing that fair, impartial and unbiased enquiry/ investigation is necessary, the Division Bench of this Court directed that the enquiry/investigation is required to be entrusted to an independent agency and therefore, the order came to be passed entrusting the investigation. The foundation of the order is the necessity of fair and impartial investigation. There can be no fair and impartial investigation by Respondent-CBI when Respondent no.2 is its Director. Respondent No.2, the then Director General of Police (DGP), Maharashtra, from March 2019 to January 2021, was directly and closely involved with the process of transfers and postings of the Police Officers above the

rank of Deputy Superintendent of Police being the Vice-Chairperson of Police Establishment Board-1(PEB-1). He was also involved in transfers and postings of the rank of Police Inspectors and below, being the Chairperson of Police Establishment Board-2 (PEB-2). Therefore, Respondent No.2 was involved in the transfers and postings of the police personnel. Considering the role of Respondent No.2 in the transfers and postings of the police officers, the mandate of the order dated 5 April 2021 that the investigation should be carried out in a fair, impartial and unbiased manner is being breached. The investigation carried out by the Respondent-CBI is not restricted to the role of Mr Anil Deshmukh alone but also his associates and confederates. Therefore, Respondent No.2 could be a witness in the investigation and would also be a potential accused, considering his involvement in the proceedings of Police Establishment Boards, which is under investigation by Respondent No.1- CBI. The investigation carried out by the agency when its director could be a potential accused is against the rule of law. The investigation by the Respondent- CBI is vitiated by bias and also the malice and bias are exhibited by Respondent No.2. Therefore, keeping in mind the mandate of the order dated 5 April 2021 of holding fair and impartial investigation in this case, the Court should set up a Special Investigation Team to be monitored by a retired High Court Judge or by this Court. The Petitioner has the locus to maintain the Petition in view of the role of the State under Section 4 of the Maharashtra Police Act and under the principles of

loco parentis and *parens patriae*. Also, the State is affected because of the harassment of its senior officers, affecting their duties. Respondents Nos.4 and 5 have been repeatedly called for questioning, and since they hold senior posts in the State, it is affecting the administration in the State. Also, the morale of the police officers in particular who are transferred and in general all police officers is being affected for which the Petitioner acts in *parens patriae*. Respondent No.2 has not filed any affidavit and, therefore, on the principle of non-traverse, deem to have admitted the allegations. Mr Seervai, the learned Senior Advocate for Respondent Nos.4 and 5, has supported the contentions of the Petitioner and advanced additional legal propositions.

11. Mr Aman Lekhi, Additional Solicitor General, opposed the Petition contending in brief as follows. A Prerogative writ is not issued as a matter of course. The conduct of the State of Maharashtra, as noted in the judicial orders, dis-entitles it from seeking any equitable remedy. The sole object of filing this Petition is to scuttle the investigation against its ex-home minister conducted by the Respondent-CBI. The plea that Petitioner wants fair investigation is belied by its overall conduct, and it is not bona fide, and the real purpose of the Petition is to derail the ongoing investigation. The State of Maharashtra has no locus to maintain the Petition. The Respondent Nos.4 and 5 have not raised any substantive challenges to the summons issued to them and, therefore,

they cannot make submissions challenging the summonses in this Petition. Respondent Nos.4 and 5 have not been harassed. The Respondent Nos.4 and 5 are not called only because they are Chief Secretary and Director General of Police of the State but in respect of their individual roles. Respondent Nos.4 and 5 are under no disability to institute proceedings on their own, and the Petitioner cannot take up the cause of Respondent Nos.4 and 5. No case for harassment or embarrassment of any of the officers is made out. The principles of *loco parentis* and *parens patriae* cannot be invoked by the State. The argument that the State has to espouse the cause of the police officers in the State is baseless as the investigation is not about all transfers and postings. The investigation in question does not relate to police transfers of the year 2020 in general but to the abuse of official position by the erstwhile Home Minister. The issues of the composition of Police Establishment Boards (PEB) and its conduct of affairs are not relevant for the present investigation and, therefore, Respondent No.2 is not interested in the outcome of the investigation, and it is not even the specific case of the Petitioner. The PEB at range level does not involve the Director General of Police, and the PEB at Commissionerate level does not include the Director-General of Police, and in case of mid-term transfers of all police officers above the rank of Deputy Superintendent, the competent authority is the Home Minister. Sections 22C and 22F of the Maharashtra Police Act are not relevant in the facts of the case as they only are enacted to check the arbitrary powers. The Petitioners

in Public Interest Litigation No.6/2021 and Writ Petition Nos.1902 and 1903/2021 did not raise the issue that transfers were the result of the extensive process of the PEBs but the role of the Home Minister. The State of Maharashtra has accepted that the Home Minister has changed the decision of PEB in some cases and, therefore, the investigation is warranted. The Petitioner has failed to establish the claim of mala fides. There are no specific pleadings and no material to substantiate the general allegations. The Petitioner was unable to demonstrate any abuse of authority by the Respondent No.2 or that Respondent No.3 is investigating in an unfair manner. There is no factual foundation for the allegation of bias, and mere apprehension is not a likelihood of bias. There is no abuse of authority by Respondent No.3, who is doing his duty to carry out an investigation. There is no reason for Respondent No.2 to file an affidavit. Once there is documentary evidence and justifying the need for investigation and to summon Respondent Nos.4 and 5, a reply affidavit is not necessary. Respondent No.3 has filed a reply affidavit. On these grounds, it is contended that the petitioner is disentitled to any equitable relief.

12. The relevant prayers in the Petition are as under:

“(a) To issue an appropriate writ, order or direction under Article 226 of the Constitution of India, constituting a Special Investigation Team for the purposes of taking over the investigation and taking further action/s in Crime No. RC2232021A0003/CBI/AC-5/New Delhi currently pending with Respondent Nos. 1 to 3 and that the said investigation

be monitored by this Hon'ble Court, or by a Hon'ble Retired Judge of this Hon'ble Court, appointed by this Hon'ble Court;

(b) To issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, ordering and directing Respondent Nos.1 to 3 to handover investigation of Crime No. RC2232021A0003/CBI/AC5/New Delhi to the Special Investigation Team so constituted by this Hon'ble Court."

Conjoint reading of the prayers would show that the Petitioner wants the investigation in respect of the FIR by a Special Investigation Team to be monitored by this Court or a retired Judge of this Court after withdrawing it from Respondent-CBI. The Special Investigation Team (SIT) sought for by the State is not the one from the Respondent- CBI. In short, the prayer is to recall the investigation entrusted to the Respondent- CBI by this Court in Public Interest Litigation No.6/2021 and other matters and hand it over to SIT, quite obviously of the State of Maharashtra, to be monitored by this Court or by a retired Judge of this Court. Though the prayer is to monitor the investigation through a retired High Court Judge or this Court, monitoring is not the same as actual investigation. Which direction to take the investigation and how the investigation will be carried out in the field would vest with the investigating officer. Even if the investigation is monitored, the monitoring has its limitation. Therefore, in the case of the formation of SIT, though monitored by this Court, the practical control of investigation will remain with the State of Maharashtra. Thus, the

petitioner's prayer is, in essence, a prayer to withdraw the investigation entrusted to the Respondent CBI by this Court and hand it over to the State of Maharashtra.

13. Therefore, this being the implication of the prayers made in the petition, they cannot be seen in isolation. Since the petitioner has invoked the extraordinary jurisdiction of this court vested in equity, the totality of the circumstances will have to be seen. All aspects such as the conduct of the parties, bona fides of the claims, allegations of bias and malice, pleadings, and earlier observations of the Court will have to be cumulatively taken into consideration to determine whether any case is made out for grant of the relief. Two broad questions will arise for consideration. First, whether the prayer of the Petitioner is bona fide. Second, because Respondent no.2 is the director of Respondent CBI, whether it is disentitled from carrying on the investigation in this FIR. Both questions are overlapping and will have to be answered conjointly and not disjunctively. The ultimate test will be whether any case is made out for exercise of the equity jurisdiction.

14. We propose to discuss these questions in the following manner. First, we will examine the conduct of the Petitioner as noticed in the judicial pronouncements preceding this Petition and the documents on record. After that, the issue of locus assumed by the Petitioner on behalf of its officers. Then we will consider the

charges of malice/ bias/ *malafides* levelled by the Petitioner to justify its claim that the investigation under the Respondent- CBI is not a fair investigation in the light of Respondent No.2 having assumed charge of the post of Director of CBI. Thereafter other ancillary points such as submission of information in a sealed envelope by the Respondent- CBI for the perusal of the Court, followed by a summary of the conclusions and the operative order. Since the issues overlap and we consider all aspects cumulatively, our analysis is not strictly compartmentalized.

15. First to notice the pleadings. The Petitioner has stated the background of facts in paragraph-4 of the Petition. In paragraph-5, Petitioner has reproduced sections 22C and 22F of the Maharashtra Police Act. Paragraph-6 refers to the appointment of Respondent No.2, Director General of Police for the State of Maharashtra. It is stated that Respondent No.2 was directly and closely involved in the process of transfers and postings of police officers in both categories that are above the rank of Deputy Superintendent of Police and below the rank of Police Inspector. It is stated that Respondent No.2 actively participated in the meetings. In paragraph-7 reference is made to receipt of the report from the Commissioner, State Intelligence Department (SID) regarding transfers of police officers, the Respondent No.2 forwarding the same, and the reference to the letter to the Additional Chief Secretary (Home), Respondent No.5- who is now the Chief

Secretary. Paragraph-8 reiterates that Respondent No.2 was an integral and important part of transfers. In paragraph-9, there is a narration about the appointment of Respondent No.2 to the post of Director-General, CISF. Paragraphs-11 to 15 refer to Public Interest Litigation No.6 of 2021 and other connected matters and the order of the Court for preliminary enquiry, report of the preliminary enquiry and registration of FIR. It is then stated in paragraph-16 that the Chief Secretary, State of Maharashtra, was examined through video-conferencing on 15 May 2021. Paragraph-17 refers to the appointment of Respondent No.2 as Director of CBI. Then reference is made again to Respondent No.2 being Vice-Chairman and Chairman of PEB-1 and PEB-2, respectively. In paragraph-19, reference is to the summons issued to Respondent Nos.4 and 5 in September 2021 and the correspondence between Respondent Nos.4 and 5 and Respondent No.3. Paragraph-22 states that Respondent Nos.1 to 3 are determined to harass and embarrass the senior officers. Paragraph-23 states the general proposition that since allegations involve the integrity of the police force, the Court must ensure a fair investigation. Thereafter, the Petition specifies the grounds of challenge. The Petition is verified by the Joint Secretary of the Home Department.

16. Reply affidavit filed by the Respondent- CBI is sworn by Respondent No.3. In the reply, reference is made to the observation made by this Court in the order dated 5 April 2021 in PIL

No.6/2021 with an assertion that Petitioner is trying to scuttle the investigation. Also that the State of Maharashtra had also filed Criminal Writ Petition No.1903/2021, which was dismissed by this Court. In paragraph-10 of the reply, the Respondent- CBI has given a chart showing the cases filed by the State of Maharashtra and the result thereof. The reply states that it is clear that the State is trying to hinder the investigation, and there is resistance to carry out investigation right from the beginning, which is continued. In reply, it is stated that notices have been issued to Respondent Nos.4 and 5 for questioning that too by virtual mode, yet Respondent Nos.4 and 5 have not cooperated with the investigation. It is stated that the Commissioner of Police, Cyber Branch, Mumbai communicated to the Respondent- CBI alleging that it is overstepping the scope of investigation from which it is clear that the State is only trying to delay and hamper the investigation. The reply also states that instead of cooperating with the investigation that this Court found necessary, the State has made continuous attempts to create roadblocks in the way. The locus of the Petitioner is questioned.

17. The rejoinder affidavit is filed by the Joint Secretary on behalf of the Petitioner stresses on Section 4 of the Maharashtra Police Act and the principle of *loco parentis* for establishing the locus. Reference is made to a newspaper report dated 24 August 2021. It is stated that after Respondent No.2 took charge as Director of Respondent-CBI, notices were issued requesting for

original minutes of the meetings. The charge that Petitioner is trying to hinder the investigation is baseless as the Petitioner has handed over 35 files to the Respondent- CBI on 7 October 2021. Thereafter, in the rejoinder, the Petitioner has dealt with the reply para-wise reply. In paragraph-28, the Petitioner stated that Respondent No.4 was not DGP at the relevant time and even knowing fully well, he was summoned on account of he being the present being the DGP of Maharashtra. It was denied that there was any need for a further statement of Respondent No.5. Reference is made as to the proceedings in the Criminal Writ Petition No.1903/2021 and when the matter was posted for filing written statement and the arguments were concluded and when Respondent No.2 was appointed, to demonstrate that this particular challenge could not have been taken in the Criminal Writ Petition No.1903/2021. This, in short, is the pleading with which the parties are before us.

18. The State of Maharashtra is not before us as a public entity but as a party to the litigation. Regarding the same subject matter, this is the third petition apart from the proceedings in the Supreme Court where the State of Maharashtra is either respondent or the petitioner. Therefore, it is the conduct of the State of Maharashtra as party to the litigation and Petitioner before us that will have to be considered. The stand taken by the Petitioner in the proceedings as noted by judicial orders will have to be examined.

19. The objection raised by the Respondent- CBI regarding the locus of the State of Maharashtra to file this Petition is that it has no legal right nor any legal right, which is vested, is infringed. The argument of locus of the Petitioner has another connotation that is assuming in law, the Petitioner can file this Petition whether by its conduct it is entitled to this remedy.

20. The Petitioner- The state of Maharashtra has come to this Court primarily on the ground that it wants fair and impartial investigation as contemplated by this Court in the order dated 5 April 2021. As regards the contention of the Petitioner that it wants fair and impartial investigation in the light of the order of this Court dated 5 April 2021, the Respondent- CBI contended that the observations of the Division Bench in the order dated 5 April 2021 could not be torn out of context and they were made about the conduct of the Petitioner itself.

21. First to consider the Petitioner's conduct as noticed and commented upon in the judicial proceedings and from the record. Our examination of the record shows that the petitioner's conduct shows a pattern narrated below.

22. Three public Interest litigations being PIL No.6/2021, PIL(L) No.6072/2021 and PIL (L) No.6166/2021 and one Writ

Petition No.1541/2021 were filed in this Court raising common grievance in respect of the conduct of the Ex-Home Minister of the State of Maharashtra. The genesis of these petitions was a letter written to the Chief Minister of Maharashtra by Mr Param Bir Singh, Commander General of Home Guards Defence (earlier Commissioner of Police of Mumbai). Mr Param Bir Singh made allegations against Mr Anil Deshmukh (the then Home Minister). In this letter written to the Chief Minister, it is stated by Mr Param Bir Singh that the Home Minister has, as a regular practice, been repeatedly calling the police officers and giving them instructions in respect of the course to be followed by them in performance of their official duties. The Home Minister has been calling the police officers at his official residence, bypassing the Commissioner and other superior officers of the Police Department to whom those respective Police officers report. The Home Minister has been instructing them to carry out official assignments and collection schemes, including financial transactions, as per his instructions based on his expectations and targets to collect money. It was stated that these corrupt malpractices had been brought to his notice by his officers. On 21 March 2021, the Petitioner in Writ Petition No.1541/2021 filed a complaint with the Malabar Hill Police Station and the Director, Anti-Corruption Bureau of the CBI. No action was taken on the complaint by the State of Maharashtra. Thus, these petitions were filed because the State of Maharashtra did not act upon the allegations made against Mr Anil Deshmukh.

23. During the hearing of the aforesaid Petitions, the State of Maharashtra opposed the petitions, firstly taking a preliminary objection to the maintainability of the public interest litigation of Param Bir Singh on the ground that it is espousing personal cause. The State, through the learned Advocate General, contended that the letter written by Mr Param Bir Singh is based on hearsay information, and there is no reference to any evidence to establish the allegations. The PIL of Mr Param Bir Singh was also opposed on the ground that after he had approached the Supreme Court under Article 32 of the Constitution of India, which Petition was disposed of, no liberty was asked for and obtained from the Supreme Court. It was contended that Mr Param Bir Singh is a disgruntled litigant, and at his behest, PIL should not be entertained. The learned Advocate General relied upon various decisions of the Supreme Court on the scope of public interest litigation. The learned Advocate General had stated that Enquiry Committee had been constituted by the Government of Maharashtra with a retired High Court Judge as chairperson to inquire into the allegations against Mr Deshmukh and, therefore, nothing survives in these public interest litigations. During the hearing, Mr Param Bir Singh submitted an additional affidavit which included a top-secret letter dated 25 August 2020 written by Ms Rashmi Shukla, former Commissioner (Intelligence), SID marked to the then Director General of Police, State of Maharashtra, Respondent No.2 herein.

24. The Petitioner in Writ Petition No.1541/2021 invited the attention of the Division Bench to the written complaint contending that the complaint makes out a case for a commission of a cognizable offence, and it is mandatory on the part of the Police to register an FIR. Upon a query from the Division Bench to the State of Maharashtra as to whether any action has been taken upon the complaint by the Petitioner to the officer-in-charge of the Malabar High Police Station, the Division Bench recorded "having heard a feeble submission that a preliminary enquiry might have been embarked upon". The Court thereafter asked for the production of General Diary/ Special Diary. On instruction, the learned Advocate General submitted that though there is an entry in respect of Petitioner's complaint, nothing further is reflected in the station diaries. Upon the defence taken by the State of Maharashtra in this Petition, the Division Bench observed thus:

"62. Pertinently, the chink in the State's armour is truly manifested by the frivolity of the submissions made on its behalf. The proceedings instituted by Shri Param Bir and Shri Upadhyaya have been opposed on the ground that such institution was not preceded by any written complaint; however, once it came to the fore that Dr. Patil had made a complaint, the track of attack was changed and objection to the entertainability of her CrWP was raised based on Sakiri Vasu (supra) and M. Subramaniam (supra)."

The Division Bench also noted that although an impression was sought to be created that preliminary enquiry was on, it was conceded by the Advocate General that apart from entry in the

Inward Register, no action was taken on the said complaint, which was also rendered as a finding of the Court.

25. It is clear from the observation made in the order dated 5 April 2021 that the State of Maharashtra opposed the Petition and the demand for investigation firstly by contending that the allegations of Mr Param Bir Singh against Mr Deshmukh were baseless without any reference to the evidence. Upon the complaint of the Petitioner in person therein, no FIR was lodged even though a cognizable offence was made out. The observations of the Division Bench clearly highlighted the State of Maharashtra's negative approach to the need to investigate the matter. The Division Bench disapproved of various technical objections put forth by the State of Maharashtra to avoid investigation. The Division Bench found that the stand of State of Maharashtra was manifested by the frivolity of submission on its behalf. The Division Bench noted that the State of Maharashtra took no action on the complaint. After recording that there was a failure on the part of the State of Maharashtra not even to lodge an FIR, the Division Bench observed that fair and impartial inquiry is necessary. These observations were made in the light of Mr Anil Deshmukh being the Home Minister and the Police Department being under the control and direction of the Home Department, and therefore there cannot be any fair, impartial and untainted probe if it is entrusted to the State police force. Consequently, the Division Bench asked the Director of CBI

to initiate a preliminary inquiry and take the matter further in accordance with the law. Therefore, the observations made by the Division Bench in the order dated 5 April 2021 sought to be relied upon by the State of Maharashtra will have to be read along with the other parts of the order where the Division Bench noted and disapproved the conduct of the State of Maharashtra. These observations are against the Petitioner - State of Maharashtra.

26. Pursuant to the order passed by the Division Bench on 5 April 2021, a preliminary inquiry was conducted, and FIR was lodged by the Respondent- CBI on 21 April 2021 under section 120B of the Indian Penal Code, 1860 and section 7 of the Prevention of Corruption Act, 1988, as amended. The State of Maharashtra filed Criminal Writ Petition No.1903/2021 challenging 4th and 5th unnumbered paragraphs of the FIR. The 5th unnumbered paragraph was in respect to the ex-Home Minister and others exercising undue influence over the transfers and postings of officials. The Petitioner objected to these paragraphs contending that the matter was beyond the scope of inquiry and investigation directed to be conducted by this Court by order dated 5 April 2021. The Petitioner contended that the authority to conduct an investigation is the province of the State and not the CBI. In this Petition, the Respondent- CBI filed an interim application for intervention because the Petitioner had not handed over the documents required for the investigation of the case.

27. The Division Bench dismissed Writ Petition No.1903/2021 by judgment and order dated 22 July 2021. The Division Bench held that transfers and postings of police officers referred to in the 5th numbered paragraph of the FIR is linked with the allegations of abuse of official position by the then Home Minister and his confederates. In paragraph-79 of the judgment rendered in Criminal Writ Petition No.1903/2021, the Division Bench noted that “there is steadfast resistance” of the Petitioner to share the report of the SID with the Respondent- CBI and issued a direction to the Petitioner to hand over the same. The Petitioner challenged this order by filing Special Leave Petition No.5563/2021, which the Supreme Court dismissed on 18 August 2021.

28. The Respondent- CBI also filed an application before the 37 Court of Chief Metropolitan Magistrate, Mumbai on 5 May 2021 in C.R.No.2/2021 concerning the report of Ms Rashmi Shukla of SID to be given to the CBI. The investigating officer of the State of Maharashtra filed a reply to the application on 13 May 2021 that the material was sent to the Forensic Laboratory. On 7 October 2021, after the Supreme Court rejected the special leave petition of the State of Maharashtra on 18 August 2021, the files containing documents regarding PEBs were handed over to the Respondent- CBI. At this juncture, it is also relevant to note that Respondent No.5 was asked to appear for answering certain questions; however,

he did not remain present on 22 September 2021, 28 September 2021, 9 October 2021 and 13 October 2021. Similarly, Respondent No.4 was also requested to join the investigation, and he did not attend on 22 September 2021, 29 September 2021, 9 October 2021 and 13 October 2021. The request of Respondent Nos.4 and 5 to accommodate on the dates convenient to them and not at Delhi but at Mumbai was also granted, but Respondent Nos.4 and 5 did not remain present.

29. This background of the litigation and findings of the Court is necessary because the Petitioner contends that it is not and was never opposed to the investigation in this alleged offence. The Petitioner was a party in these cases, and its conduct will have to be seen as any other party litigant.

30. There is one area where the conduct of the Petitioner needs to be noted. The order of the Division Bench dated 5 April 2021 refers to the report submitted by Ms Rashmi Shukla, Commissioner of State Intelligence Department and further communications. These documents have been placed before us by the Petitioner by way of compilation. From these documents, the approach of the Petitioner and Respondent Nos.2 and 5 can be seen. Along with the letter written by the State Intelligence Department, a report was submitted to the Director-General of Police, Respondent No.2 as he then was, stating that network of brokers with ingrained

political connections engaged in arranging desired postings in exchange for monetary compensation. A detailed and factual report with surveillance and transfer involved was given to the Director-General. The Commissioner, SID, recommended a high-level enquiry and strict action against all stakeholders engaged in the activity. On 26 August 2020, Respondent No.2 wrote to Respondent No.5, who, at that time, was Additional Chief Secretary, Home forwarding the report of the Commissioner, SID and recommending that it should be brought to the notice of the Hon'ble Chief Minister and immediate and comprehensive inquiry be ordered to identify the individuals.

31. The response of Respondent No.5, the then Additional Chief Secretary (Home), to these communications, whose cause the Petitioner seeks to espouse today, is pertinent. In the communication dated 28 September 2020, the Additional Chief Secretary wrote to Respondent No.2; he conveyed three points. In the first point, Respondent No.5 advised Respondent No.2, as the head of the police force to tell those who are involved that the conduct of police officers approaching undesirable individuals is not correct and to counsel the officers not to exhibit such conduct. In the second point, Respondent No.5 informed Respondent No.2 to advise the officers to avoid contact with such individuals, and police officers should not be naive and gullible to fall for advances from such persons. Thirdly, if there is any concrete evidence, the proposal

may be submitted to the Department to be placed before the competent authority. The department means the Home Department. This letter dated 28 September 2020 written by Respondent no.5 downplays the gravity of the report submitted by the Commissioner, SID and does not refer to the necessity of enquiry.

32. Though the learned counsel for the Petitioner stated that the Petitioner is not opposed to the investigation, the first reaction of its Home Secretary was that officers need to be counselled; they should avoid contact, and if there is any cogent material, a proposal may be submitted. The response of the Respondent No.5 overlooks that report contained a transcript and detailed information annexed to it. Despite the same, Respondent No.5 chose to advise counselling. The fact that there is already concrete evidence was ignored. We are not commenting on the correctness of the contents of the Report as it is a matter of the investigation; the point is that in the matter of transfer of police officers, the initial response of Respondent No.5 and the Petitioner was to block any further scrutiny by downplaying the gravity. This response of the Home Secretary of the Petitioner is part of the overall conduct of the Petitioner, which we have taken cognizance of.

33. It is the case of the Respondent- CBI that the State of Maharashtra does not want the investigation to proceed, and even

though it keeps saying that investigation is desirable and necessary, its conduct shows otherwise. It cannot be said that the charge of the Respondent- CBI is baseless, more particularly when it is not a mere allegation but the Respondent- CBI relies on the judicial orders passed and the documents produced by the Petitioner itself. When a complaint was filed against Mr Anil Deshmukh, when he was the Home Minister, no steps were taken to register an FIR. During the course of hearing in the group of PILs before the Division Bench, the Petitioner first submitted that preliminary inquiry is being made, then accepted that no inquiry was made. The Petitioner opposed the prayer for investigation and did not take a stand that investigation is necessary. Even in the matter concerning the report of Ms Rashmi Shukla of the State SID, the first response of Respondent No.5 was to trivialize the need for investigation. When Respondent No.2, as a DGP, had recommended investigation through State CID, Respondent No.5, when he was Additional Chief Secretary (Home), informed him that it is not necessary unless clear evidence is shown and counselling of the officers is a better option.

34. The State of Maharashtra did not come with the suggestion of formation of SIT with the supervision of the Court at the first instance. Not even an FIR was registered. At the first instance, the stand of the Petitioner was that there was nothing to investigate. Therefore the prayer of the Petitioner cannot be looked at separately from the earlier conduct, particularly in the light of the

argument of the Respondent- CBI that the petitioner does not want an investigation in this FIR concerning ex-Home Minister and all its efforts are towards that end. This stand of the Respondent- CBI is based on the documents and judicial orders. When remedy in equity is invoked, the Court cannot ignore the backdrop and conduct of the Petitioner as emerges from the record.

35. The Petitioner contends that it has filed this Petition since its officers are being harassed and intimidated by the Respondent- CBI. The Petitioner submitted that the State has the locus and also legislative competence to file the Petition, and this is recognized by this Court in the order passed in Criminal Writ Petition No.1903/2021. The Petitioner, in rejoinder, has referred to section 4 of the Maharashtra Police Act and contended that because the transfers of police personnel is a subject matter of investigation which involves all police officers, the Petitioner has a vital interest in the case. The Petitioner has also invoked the principles of *parens patriae* and *loco parentis*. According to the Respondent- CBI, section 4 of the Maharashtra Police Act has no application, which is only a power of superintendence, and there is no such factual basis that the officers are being harassed. Respondent Nos.4 and 5 were requested to assist the investigation, which they have refused. According to the Respondent- CBI, since Respondent Nos.4 and 5 had a specific role, they were asked to attend the questioning, and there is no attempt to harass or embarrass the DGP and the Chief

Secretary as sought to be contended by the Petitioner.

36. The Petitioner on the aspect of harassment of the officers, has pleaded in paragraph-22 as under:

“22. That Respondent Nos.1 to 3 appear determined to harass and humiliate the senior-most officers of the Petitioner being the Chief Secretary and the Director General of Police for the State of Maharashtra. They are repeatedly being summoned with a view to cause embarrassment to them and to the Petitioner, with ulterior motives, including to sensationalise the investigation. The senior-most officers of the Petitioner being the Chief Secretary and the Director General of Police for the State of Maharashtra, are being called every few days and the same is causing, and will cause, grave prejudice to the Petitioner on account of these officers being unavailable to attend to their official duties which are crucial and vital for the smooth functioning of the State, and which takes up most of the time of these officers, given their high designations.”

In the rejoinder, the Petitioner on the aspect of harassment of its officers has pleaded as follows:

“28. It is pertinent to note that a bare perusal of the said letter makes it evident that Respondent No.1 is continuing investigation into the transfer and postings of police officials. Further, Respondent No.1 has stated that it wishes to examine Respondent No.4 on the "handling of the complaints related to delinquency of police officials w.r.t. favouritism in their transfers and posting related matters...". Admittedly, at the relevant time Respondent No.4 was not DGP, nor was he in any way connected with transfers or postings. Despite knowing this full well,

he is being summoned to join the investigation solely on account of presently being the Director General of Police for the State of Maharashtra.....”

It is not that many officers are needlessly being called repeatedly even if they attend, affecting the State's functioning. The record shows that it was only Respondent Nos.4 and 5 who were called for questioning. Respondent No.3 wrote to Respondent No.4 requesting him to appear on 22 September 2021 at New Delhi. A similar letter was written to Respondent No.5 to appear on 22 September 2021 at New Delhi. Respondent No.5 wrote to Respondent No.3 seeking context and questionnaire. This questionnaire was supplied to Respondent No.5 by Respondent No.3. It was stated that the questions would be surveillance of the State Intelligence Department regarding transfers and postings of the police officers. Though notices were issued to Respondent Nos.4 and 5 to come to New Delhi, Respondent No.3, so as not to cause inconvenience to them, decided to examine them at Mumbai. The dates suitable to Respondent Nos.4 and 5 were also asked to be indicated. Respondent Nos.4 and 5 did not remain present on various dates as indicated above. Both Respondent Nos.4 and 5 are also government officers of the State are expected to co-operate with the investigation carried out by the Respondent- CBI pursuant to the orders of this Court. We fail to understand how requesting to participate in the investigation would amount to harassment of these two officers. As rightly contended by the learned ASG, the

harassment would be if it was insisted that these officers should come to Delhi at an inconvenient time. In that case, it could have been said that this would cause harassment or embarrassment to these officers and may affect their duties. Therefore, there is no such factual foundation laid for this charge in the Petition or in the rejoinder nor from the facts it is made out.

37. If the Respondent Nos.4 and 5 were, in fact, harassed or embarrassed is an assertion to be made by them, and if they were harassed or embarrassed, nothing stopped them from filing their own petitions and making averments on oath. We doubt that even if such independent petitions had been filed by Respondent Nos.4 and 5, they could have taken a ground of harassment or embarrassment because they were only asked to participate in the investigation. It is also pertinent to note that Respondent Nos.4 and 5 did not remain present even though they were requested by Respondent No.3. We also note that the Petition is verified, and the affidavit is filed by the Joint Secretary, Home Department, who is not competent to assert facts that are solely within the knowledge and personal to Respondent Nos.4 and 5. In what manner the official duties of Respondent Nos.4 and 5 are affected, and consequentially the functions of the State is not specified in the Petition. There is also no merit in the petitioner's contention that the statement of Respondent No.5 was once recorded, and therefore calling him again is harassment. It cannot be argued that further information cannot be

asked for. Consequently, we find no merit in the argument of the Petitioner that it had to file this Petition because its senior officers have been harassed and embarrassed.

38. In the rejoinder, a reference is made to Respondent No.4 as summoned to join the investigation solely because he presently is the DGP of Maharashtra. It is so sought to be clarified by the learned counsel for the Petitioner and learned counsel for Respondent Nos.4 that this statement has to be seen in the light of what is written preceding it. According to us, the statement that Respondent No.4 was not DGP at the relevant time and he has been summoned to join the investigation solely on account of he being DGP is a clear statement that he is unnecessarily called. In response, the learned ASG has placed on record and has read the communication written by Mr Param Bir Singh on 19 April 2021 to the Director of CBI wherein he has made various references to Mr Pandey, and according to the learned ASG, this is the reason why the Respondent No.4 was called.

39. The Petitioner and Respondent Nos.4 objected to the reading the letter dated 19 April 2021 by the learned ASG and sought to file an affidavit. The request for filing affidavit was opposed by the Respondent- CBI. The learned counsel for Respondent Nos.4- Mr.Pandey submitted that he wants to clarify that allegations in the letter dated 19 April 2021 are untrue. We are

not going into allegations in the letter dated 19 April 2021. We referred to this letter only to satisfy ourselves that Respondent No.4 is not needlessly harassed by requesting him to join the investigation. We find that there appears to be a reason for calling Respondent No.4 to come for questioning. According to the Petitioner and Respondent Nos.4, the intention of Respondent-CBI reading this letter was to prejudice the Court. We find no merit in this submission. The Respondent-CBI showed the letter of Mr Param Bir Singh dated 19 April 2021 only to point out that Mr Pandey was not called only because he is DGP to target the highest police officer in the State but to show his individual role upon which questions were sought to be asked. In the limited ambit of the argument and the purpose of relying on the letter dated 19 April 2021, we have not found it necessary to permit filing reply, neither it is required at this stage to comment on the merits of the allegations contained in the letter.

40. There is also no merit in the grievance of the Petitioner and Respondent no.4 and 5 that the letter 19 April 2021 was produced in the midst of argument by the Respondent- CBI to prejudice the Court. The Respondent- CBI relied upon this letter in view of the stand taken by the Petitioner in the rejoinder that it was not necessary to call Mr Pandey to join the investigation and to show the reason why he was called. Furthermore, the Petitioner has annexed to the present Petition a copy of Criminal Writ Petition

No.1843/2021 filed by Mr Param Bir Singh on 27 April 2021; however, the Petitioner has only annexed the memo of Petition and the index. The index shows that the representation/communication dated 19 April 2021 is annexed to that Petition as Exh. C. There is no dispute on this position. Therefore, had the Petitioner annexed the complete copy of Criminal Writ Petition No.1843/2021, the letter would have been on the record of this Petition and the Court would have perused it and, thus, there is no merit in the charge that it was read only to prejudice the Court. Even the summary of contents of the letter of 19 April 2021 is found in the Criminal Writ Petition No.1843/2021 from paras (7. XXII) to (7. XXVI) memo of which is an annexure to this Petition. The learned ASG has also placed before us a copy of the order passed by the Supreme Court in SLP (CRL) No.8788/2021 dated 22 November 2021, where the letter written by Mr Param Bir Singh to CBI dated 19 April 2021 is referred to.

41. As regards the need to call Mr Kunte, Respondent No.5 is concerned; there is not much argument made on this aspect. After requesting Mr Kunte to attend investigation when he had asked for the ambit of the questionnaire, the same was given to him. Mr Kunte was also informed as to why he was called for. Therefore, what transpires is that Respondent Nos.4 and 5 were requested on various occasions to participate in the investigation at the venue and time, which were not inconvenient. Neither they were needlessly

called.

42. It is not being contended before us by the Petitioner that there is no need for investigation. Once there is a need to investigate, it would become the duty of Respondent No.3 as investigating officer to carry on the investigation entrusted to him under the directions of the Court. As stated above, the impact of prayers sought for by the Petitioner would be an interference with the investigation. The law is settled that the High Court in its extraordinary power would not generally interfere with the investigation nor would direct any manner in which the investigation should be carried out.

43. The next point on which the Petitioner contends that it has approached this Court is because the morale of its officers is being affected. It is stated that almost 1900 Police officers who are transferred are under cloud, who personally cannot come to the Court and, therefore, the Petitioner was required to come to Court on their behalf. The learned ASG pointed out that the larger issue is not the part of the investigation carried out by the Respondent- CBI, but it is the investigation as noted in the order of this Court passed in Criminal Writ Petition No.1903/2021 restricted to the allegations of abuse of official position by the then Home Minister and his confederates. Thus, the investigation is not about the general transfers and postings of the police officers but the conduct expressly

attributed to the then Home Minister. That being the position and the area of investigation being specific, it cannot be said that the morale of the entire police force is affected and that they would be demoralized. Furthermore, if there is any truth that the transfers have taken place through illegal means, it would be in the State's interest that the same is ascertained. Therefore, the argument Petitioner that the entire police force will be demoralized as a ground to file Petition on their behalf invoking the principle of *parens patriae* is not justified.

44. The concept of the power of superintendence under section 4 of the Maharashtra Police Act to invoke the principle *parens patriae* of does not have a legal basis in the facts of the case. Section 4 of the Maharashtra Police Act reads thus:

4. Superintendence of Police Force to vest in the State Government. - *The superintendence of the Police Force throughout the State of Maharashtra vests in and exercisable by the State Government and subject to such superintendence, the Secretary to the State Government in the Home Department, whether designated as Secretary, Home Secretary, Special Secretary, Additional Chief Secretary or otherwise, in charge of the Law and Order Division of the Home Department shall exercise control, direction and supervision over the Police Force.*

The power of superintendence under section 4 of the Act generally means supervising and giving direction. It is not explained how the Petitioner can invoke concept under section 4 of power of

superintendence on behalf of Respondent Nos.4 and 5 who are called upon to answer certain questions, and it is only they who can provide answers. The power of superintendence under Section 4 is that even though there is a hierarchy within the police force, the State Government would have an overarching role. This role of the State Government is irrelevant regarding the participation of Respondent Nos.4 and 5 in the investigation. Reliance of the Petitioner on the decision of the Division Bench in the case of *The State of Bombay v. Ganpat Dhondiba Sawant*¹ in respect of section 4 of the Maharashtra Police Act is misplaced. The Division Bench has observed that the State Government has absolute power in the best interest of the police force, but Section 4 was referred to in the context of contention of the State Government that it is vested with the power to inflict the punishment of dismissal on a police officer from service, and in that reference, the Division Bench made the observation. But this does not mean that the State Government invoke the doctrine of *parens patriae* on behalf of police officers of the State. According to the learned ASG, this very notion of the political executive considering the police officers of their own is why the Supreme Court had to lay down guidelines emphasizing the police officers should be insulated from political influence.

45. In conclusion, we find merit in the charge of the respondent-CBI that this Petition is nothing but an extension of the stand of Petitioner to scuttle investigation concerning the ex-home

¹ AIR 1966 Bom 228

minister, displayed right from the inception as observed by this court in earlier orders referred above. The Court exercising jurisdiction rooted in equitable considerations has to ascertain whether the prayer sought is bonafide and in the public interest and that it is not for some other colourable purpose. Considering the manner in which the petitioner has conducted itself in relation to this FIR and the way in which the Petition is presented assuming locus, we are not satisfied that the prayer of the Petitioner for recalling investigation from the Respondent CBI to itself is bonafide. We may hasten to add here that this is not an indictment of the State of Maharashtra in general, but our conclusions are in respect of its conduct as a party in this litigation, answering a point in issue in this petition.

46. The next area of discussion is the case of the Petitioner that it will not be in the public interest to permit the Respondent-CBI to continue investigation since Respondent no.2 is the director of the Respondent- CBI. According to the Petitioner, it is its duty as a State to ensure that there is an unbiased investigation and, therefore, the present Petition is filed.

47. This argument based on the role of Respondent No.2 would be in two parts. First, the role as a DGP of Maharashtra and as a Director of CBI and the functions of the post. Second is the conduct of Respondent No.2, as a matter of fact.

48. Respondent No.2 was appointed as DGP of Maharashtra in March 2019 and continued till January 2021. FIR was lodged by the Respondent- CBI on 21 April 2021. Respondent No.2 was appointed as the Director of CBI on 26 May 2021.

49. It is to be noted at the outset that arguments based on the role of Respondent No.2 canvassed by the State of Maharashtra are fluctuating. Various concepts have been invoked, which have different connotations. The Petition invokes concepts such as : bias, malafides, conflict of interest, malice, direct interference, motive etc.

50. The Supreme Court has enunciated the law concerning the standard of proof for establishing these grounds. The Supreme Court in the case of *E.P.Royappa v. State of Tamil Nadu*², has observed that the burden of establishing malafides is very heavy on the person who alleges it. The allegations of malafides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. The Supreme Court cautioned the courts to be slow to draw inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and made against the holder of an office that has a high responsibility in the administration. It was clarified that this care must be taken not because of any special status that the high officials enjoy but because, otherwise, functioning effectively would become difficult in a democracy. In the case of *Ratnagiri Gas and Power*

2 (1974) 4 SCC 3

*Private Limited v. RDS Projects Limited*³, the Supreme Court has observed that allegations of malafides are more easily made than proved. It was noted that the law casts a heavy burden on the person alleging malafides to prove the same based on facts that are either admitted or satisfactorily established and logical inferences drawn from the same. The Supreme Court held that vague and general allegations unsupported by the requisite particulars do not provide a sound basis for the court to inquire into their veracity. In this decision also the Supreme Court reiterated the caution sounded in *Royappa* that a judicial pronouncement declaring an action to be malafide is a serious indictment of the person concerned that can lead to adverse civil consequences against him, and courts have to be slow in concluding when it comes to holding allegations of malafides to be proved. In the case of *Chandra Prakash Singh v. Chairman, Purvanchal Gramin Bank*⁴, the Supreme Court observed that the concept of fairness is dependent upon the facts and circumstances of each matter, and no strait-jacket formula can be evolved. On the sufficiency of pleadings, the Supreme Court observed that mere general statements would not be sufficient for indication of ill will. There must be compelling evidence available on record to conclude whether there was a bias or a mala fide. It was observed that the test of bias is as to whether there is a mere apprehension of bias or there is a real danger of bias. On this score, the surrounding circumstances must and ought to be collated, and

3 (2013) 1 SCC 524

4 (2008) 12 SCC 292

necessary conclusions are drawn therefrom. It was observed that if the allegations are mere fanciful apprehensions, the question of declaring them to be unsustainable will not arise. Therefore, with these cautions in mind, we will have to proceed with care to analyze the general allegations and imputations made by the Petitioner.

51. In the Petition and the rejoinder, the following pleadings have been made regarding the ground of bias and malafides.

- a) Respondent No.2 is “directly and closely involved in the process of transfers and postings of police officers”.
- b) He has “participated actively in the meetings”.
- c) Respondent No.2 was an "integral and important part of PEB-1 and PEB-2”.
- d) He “after application of mind approved the minutes”.
- e) Respondent No.2 after being appointed as Director of CBI became “responsible for directing investigation” in the concerned crime.
- f) “The Chief Secretary is being summoned every day by Respondent Nos.1 and 3 "at the behest of Respondent No.2”.
- g) Respondent No.2 at the relevant time was “DGP of Maharashtra and substantially involved in deciding and implementing the transfers”.
- h) Respondent No.2 had “clear role to play in the matter of transfers and postings”.
- i) There is a "conflict of interest”.

- j) Respondent No.2 has “personal and vested interest” in the manner and outcome of the investigation.
- k) Respondent No.2 could be a "witness in the investigation”.
- l) Investigation is being carried out “in a mala fide manner and should not be permitted”.
- m) There is predetermination on the part of Respondent No.1 to exonerate Respondent No.2.
- n) Respondent No.3 is toeing the line of his superior Respondent No.2.

Thus, the Petitioner’s attack on Respondent No.2 and the investigation of Respondent- CBI under various heads such as the likelihood of bias, conflict of interest; *malafide* in the investigation; the Respondent No.3 acting under the dictate of Respondent No.2; Respondent Nos.1 and 3 are acting at the behest of Respondent No.2; and personal and vested interest. However, these phrases are mere standalone conclusions with no elaboration to be found in the pleadings.

52. Before we proceed on the aspect of the role of Respondent No.2, it has to be noted that there are no allegations in the Petition or rejoinder of whatsoever nature against Respondent No.3, who is the investigating officer. The assertion that Respondent No.2 dictating the action would amount to abdication of duty of Respondent No.3 to investigate fairly and impartially.

Thus, it would be a severe indictment on Respondent No.3 for which the Petitioner had to establish that Respondent No.3 is acting under the dictate of Respondent No.2. As a matter of fact, even assuming that Respondent No.2 is the head of the organization, that by itself does not establish that Respondent No.2 has abdicated his duty. There is no reason why any adverse imputation should be made against Respondent No.3, who is the senior officer in the Respondent- CBI in his own rights.

53. Since the State of Maharashtra has referred to the role of Respondent No.2 while he was in the State of Maharashtra to elaborate on the conflict of interest, we refer to it both as a matter of legal position and factual position.

54. The Petitioner contended that Respondent No.2, when he was DGP in State of Maharashtra, was directly and closely involved in the transfers and postings of police officers, both of and above the rank of Deputy Superintendent of Police. He was also instrumental for actual movement orders of transfers and postings of police officers. Though this ground was elaborately argued and substantial part of the writ petition is reproducing the relevant provisions, the fact that Respondent No.2 was part of PEB-1 and PEB-2 is not a disputed position. The relevant provisions of the Maharashtra police Act on this topic of discussion are as under:

“22C. Police Establishment Board No.1 .

(1) The State Government shall, by notification in the Official Gazette, constitute for the purposes of this Act, a Board to be called the Police Establishment Board No. 1.

(2) The Police Establishment Board No. 1 shall consist of the following members, namely:--

- | | |
|--|------------------------------|
| <i>(a) Additional Chief Secretary (Home)</i> | <i>... Chairperson;</i> |
| <i>(b) Director General and Inspector General of Police</i> | <i>... Vice-Chairperson;</i> |
| <i>(c) Director General, Anti-Corruption Bureau</i> | <i>... Member;</i> |
| <i>(d) Commissioner of Police, Mumbai</i> | <i>... Member;</i> |
| <i>(e) Additional Director General and Inspector General of Police (Establishment)</i> | <i>... Member-Secretary</i> |

Provided that, if none of the aforesaid members is from the Backward Class, then the State Government shall appoint an additional member of the rank of the Additional Director General and Inspector General of Police belonging to such Class.

Explanation.--For the purposes of this sub-section, the expression "Backward Class" means the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes.

22D. Functions of Police Establishment Board No. 1.

The Police Establishment Board No. 1 shall perform the following functions, namely:--

(1) Subject to the provisions of this Act, the Board constituted under sub-section (1) of section 22C may, make appropriate recommendations to the State Government regarding the service conditions of Police Officers excluding salary and allowances.

(2) In particular and without prejudice to the generality of the foregoing functions, the Board may perform all or any of the following functions, namely:--

(a) to advise and make recommendations to the State Government regarding the posting and transfer of Police Officers;

(b) to make appropriate recommendations to the State Government in respect of grievances received by the said Board from Police Officers regarding their promotions, disciplinary proceedings and other service matters.

(3) The Board shall perform such other functions as may be assigned to the Board by the State Government, from time to time.

Explanation.--For the purposes of this section, the expression "Police Officer" means a Police Officer of and above the rank of Deputy Superintendent of Police.

22E. Police Establishment Board No. 2.

(1) The State Government shall, by notification in the Official Gazette, constitute for the purposes of this Act, a Board to be called the Police Establishment Board No. 2.

(2) The Police Establishment Board No. 2 shall consist of the following members, namely:--

- | | |
|--|----------------------|
| <i>(a) Director General and Inspector General of Police</i> | <i>... Chairman;</i> |
| <i>(b) Director General, Anti-Corruption Bureau</i> | <i>... Member;</i> |
| <i>(c) Commissioner of Police, Mumbai</i> | <i>... Member;</i> |
| <i>(d) Additional Director General and Inspector General of Police (Law and Order)</i> | <i>... Member;</i> |
| <i>(e) Secretary or Principal Secretary, as the case may be (Appeal and Security)</i> | <i>... Member;</i> |
| <i>(f) Additional Director General and Inspector</i> | <i>... Member-</i> |

General of Police (Establishment)

Secretary:

Provided that, if none of the aforesaid members is from the Backward Class, then the State Government shall appoint an additional member of the rank of the Additional Director General and Inspector General of Police belonging to such Class.

Explanation.--For the purposes of this sub-section, the expression "Backward Class" means the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes.

22F. Functions of Police Establishment Board No. 2.

The Police Establishment Board No. 2 shall perform the following functions, namely:--

(1) Subject to the provisions of this Act, the Board constituted under sub-section (1) of section 22E may, make appropriate recommendations to the Competent Authority concerned, regarding the service conditions of Police Officers excluding salary and allowances. The Competent Authority shall normally act upon them.

(2) In particular and without prejudice to the generality of the foregoing functions, the Board may perform all or any of the following functions, namely:--

(a) to decide posting and transfer of Police Officers;

(b) to make appropriate recommendations to the Competent Authority concerned, in respect of the grievances received by the Board from Police Officers regarding their promotions, disciplinary proceedings and other service matters;

(c) the Board shall perform such other functions as may be assigned to the Board by the State Government, from time to time.

(3) Notwithstanding anything contained in clauses (1) and (2), the State Government may, from time to time, give directions in public interest and administrative exigencies in respect of postings, transfers and disciplinary matters relating to the Police Officers and such directions shall be binding on the Board.

Explanation.--For the purposes of this section, the expression "Police Officer" means a Police Officer of and below the rank of the Police Inspector.

22G. Police Establishment Board at Range Level.

(1) The State Government shall, by notification in the Official Gazette, constitute for the purposes of this Act, a Board to be called the Police Establishment Board at Range Level.

(2) The Police Establishment Board at Range Level shall consist of the following members, namely:--

- | | |
|---|-----------------------------|
| <i>(a) Range Inspector General of Police</i> | <i>... Chairperson;</i> |
| <i>(b) Two senior-most Superintendents of Police within the Range</i> | <i>... Member;</i> |
| <i>(c) The Reader (Deputy Superintendent of Police), in the office of the Range Inspector General of Police</i> | <i>... Member-Secretary</i> |

Provided that, if none of the aforesaid members is from the Backward Class, then the State Government shall appoint an additional member of the rank of the Superintendent of Police belonging to such Class.

Explanation.--For the purposes of this sub-section, the expression "Backward Class" means the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes.

22H. Functions of Police Establishment Board at Range Level.

The Police Establishment Board at Range Level shall perform the following functions, namely:--

(a) The Board shall decide all transfers, postings and other service related matters of Police Officers of the rank of Police Sub-Inspector to Police Inspector within the Range.

(b) The Board shall be authorized to make appropriate recommendations to the Police Establishment Board No. 2, regarding the postings and transfers out of the Range, of the Police Officers of the rank of Police Sub-Inspector to Police Inspector.

Explanation.--For the purposes of this section, the expression "Police Officer" means a Police Officer of the rank of Police Sub-Inspector to Police Inspector.

22I. Police Establishment Board at Commissionerate Level.

(1) The State Government shall, by notification in the Official Gazette, constitute for the purposes of this Act, a Board to be called the Police Establishment Board at Commissionerate Level.

(2) The Police Establishment Board at Commissionerate Level shall consist of the following members, namely:--

- | | |
|---|-----------------------------|
| <i>(a) Commissioner of Police</i> | <i>... Chairperson;</i> |
| <i>(b) Two senior-most officers in the rank of Joint Commissioner or Additional Commissioner or Deputy Commissioner of Police</i> | <i>... Member;</i> |
| <i>(c) Deputy Commissioner of Police (Head Quarter)</i> | <i>... Member-Secretary</i> |

Provided that, if none of the aforesaid members is from the Backward Class, then the State Government shall appoint an

additional member of the rank of the Deputy Commissioner of Police belonging to such Class.

Explanation.--For the purposes of this sub-section, the expression "Backward Class" means the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes.

The scheme of these Sections shows that PEB-1 has Additional Chief Secretary (Home) as Chairperson and DGP as Vice-Chairperson. PEB-1 makes recommendations and advises the State Government regarding posting and transfer of police officers of and above the rank of Deputy Superintendent of Police. PEB-2, under section 22E, has DGP as its Chairperson and decide the posting and transfer of police officer and recommendation to the competent authority. The "police officer" in this section means the police officer below the rank of police inspector.

55. Respondent No.2 was appointed as DGP of Maharashtra in March 2019 and continued till January 2021. By virtue of his post, Respondent No.2 participated in the functioning of PEB-1 and PEB-2, which also has various other members. As for the functions of PEB-1 and PEB-2, recommendations have been made. Section 22D states that PEB-1 would advise and make recommendations to the State Government, and it is for the State Government to take the decision. Even though PEB-2 decides the posting and transfer of police officers, as per section 22F(3), the State

Government can issue directions that would be binding on the Boards. Therefore, the final authority, in both cases, still remains with the State Government. The police officers in the State would be under the control of the Home Department of the State of Maharashtra.

56. The Learned Counsel for the Petitioner repeatedly used the phrase that Respondent No.2 was “involved” in the postings and transfers of police officers. As per the statutory provisions, the DGP would be part of PEB-1 and PEB-2 as an ex-officio member of the Board. The phrase ‘Involvement’, however, in criminal jurisprudence has a different connotation. The Learned Counsel for the Petitioner, during the course of his argument, submitted a chart to show that PEB-1 made 432 recommendations and only 7.6% of recommendations were deviated from, and as regards PEB-2, the transfers were accepted without any modification. Regarding the role of Respondent No.2 in PEB-1 and PEB-2, the only argument that is advanced before us by the Petitioner is that Respondent No.2 is likely to be a witness or potential accused. Nothing further was elaborated on this aspect.

57. The contention of the learned ASG is that even assuming that Respondent No.2, as a member of PEB-1 and PEB-2, by virtue of his post took decisions, it is irrelevant as far as the matter at hand is concerned. According to learned ASG, the investigation

is not about the functioning of PEB-1 and PEB-2 but about what happened in the office of the Ex-Home Minister. The learned ASG submitted that the chart handed over by the Petitioner during the course of the arguments, though its authenticity is not known, shows that investigation is necessary because the said chart shows that 7.6% of recommendations made by PEB-1 were deviated from and what happened to those 7.6% recommendations and whether they were prime posts. The learned ASG submitted whether these deviations would be crucial and were for plum postings is something for which investigation is going on. The learned ASG submitted that there was interference at the instance of the then Home Minister, and even the State accepts that there was interference as some of the recommendations were deviated from. The learned ASG contended that the link from PEB-1 and PEB-2 to the actual order is broken and is interfered with by the Ex-Home Minister, which is the subject of investigation. The learned ASG argued that the complaint made in PIL No.6/2021 was of repeated interference in the performance of official duties of the police by the Ex-Home Minister. He submitted that case was not of the compliance compliance with the statute but the breach thereof.

58. The Division Bench of this Court, in the order passed in Criminal Writ Petition No.1903/2021, dealt with the submission of the State Government regarding the aspect of general transfers of police officers. The Division Bench made a categorical distinction

between the aspect of general transfers and postings of police officers and that part of transfers and postings, which relate to the official position of the Home Minister and his confederates. The observations of the Division Bench relevant for the matter at hand are as under :

82. Mr. Dada expressed an apprehension that a roving inquiry into the transfer and posting of all officers may have a demoralising effect on the police force. The apprehension on the part of the State apparently stems from the impression that all the transfers and postings may be put in the dock. In our view, the aspect of transfer and posting of police officers referred to in 5th unnumbered paragraph of the FIR is essentially linked to the allegations of abuse of official position by the then Home Minister and his confederates.

83. The investigation agency can, in our view, legitimately inquire into the aspect of transfer and posting of police officers so also reinstatement of Shri Vaze after 15 years, to the extent those transfers and posting have the nexus with the offences alleged against the then Home Minister and his associates keeping in view the observations of the Division Bench in the order dated 5th April 2021. Conversely, the order of the Division Bench cannot be construed as giving unfettered authority to CBI to inquire into the transfer and posting of the police officers generally, which do not reflect upon the alleged acts and conduct expressly attributed to the then Home Minister and his alleged confederates and the resultant offences.

(emphasis supplied)

Therefore, the focus of the investigation is on the role of the Ex-Home Minister in the matter of police transfers and his confederates.

The case of the Respondent- CBI is that the Ex-Home Minister compromised the institutional mechanism of PEB-1 and PEB-2 by abusing the position and this abuse of position by the Ex-Home Minister is under investigation. That being the scope of the investigation, under the legal provisions concerning PEB-1 and PEB-2, the minutes of the meetings of the Boards may not become relevant as the investigation is in respect of something that is done by the Ex-Home Minister to override this statutory mechanism. Thus, we find merit in the contentions of the learned ASG on this aspect. Furthermore, under section 22G, the establishment of the board at range level comprises Range Inspector General of Police, two senior-most Superintendents of Police and Deputy Superintendent of Police. Under section 22I, the Establishment Board at the Commissionerate level does not involve the DGP. In the case of mid-term transfers of police officers above the rank of Deputy Superintendent of Police, the competent authority is the Home Minister. Therefore, there are specific areas where the DGP is not involved. This, therefore, is the position as regards Respondent No.2 and the role of Respondent No.2 when he was DGP in the State of Maharashtra.

59. The Petitioner contended that the focus of the investigation is on not Mr Anil Deshmukh alone and that the concerned FIR refers to the complaint against Mr Anil Deshmukh and unknown others. It was argued that even the order passed in

Criminal Writ Petition No.1903/2021 refers to Mr Anil Deshmukh and his confederates and associates and, therefore, even Respondent No.2 would be included in this definition. We find merit in the contention of learned ASG that this reference to the 'associates and confederates' would be in reference to Mr Anil Deshmukh in overriding the institutional mechanism of PEB-1 and PEB-2. Further, this would be a matter of investigation which is going on. The Petitioner sought to rely upon the newspaper article where the statement of Respondent No.2 was recorded. Based on this, it was contended that the newspaper statement is contrary to the minutes of the meeting. This is, however, an unsubstantiated material. It was also argued that Respondent No.2 did not object when the decisions were stated to be overruled by the then Home Minister. This submission is not correct. Respondent No.2 had, in fact, suggested an immediate inquiry into the matter. The petitioner also contended that the Respondent- CBI is predetermined because Respondent No.2 is already exonerated. The investigation by CBI is still going on, and the investigating agency is not obliged to disclose us everything on the oral arguments.

60. Now, we turn to the role of Respondent No.2 as the Director of CBI. Respondent No.2 became the Director of CBI on 26 May 2021. It is this appointment of Respondent No.2 as a Director of CBI which, according to the Petitioner, renders the investigation conducted by the Respondent- CBI unfair and bad on

various counts which we have referred to earlier. It is pertinent to refer here that the process of selecting the Director of CBI is an elaborate one, and the selection is made by the committee comprised of highest of the highest posts, including the Chief Justice of India. This is to stress the importance of the post, particularly when we have to deal with the allegations reflecting on the credibility of the post and the Respondent- CBI in general.

61. It is pertinent to note that the Petition is not by an accused, but it is the State of Maharashtra that is attributing these adjectives to Respondent No.2 and consequently to Respondent No.1. Therefore, the argument of the Petitioner comes down to this that since this Court in the order dated 5 September 2021 acknowledged the need for fair and impartial investigation and since Respondent No.2 is now the Director of CBI, it will be in the public interest to take away the investigation from the Respondent- CBI because there is real functional bias, *malafides*, malice, dictate and a reasonable likelihood of bias.

62. In the petition, it is stated that upon becoming the Director of CBI, Respondent No.2 became responsible for 'directing investigation' in Crime No.RC2232021A0003/CBI/AC-5/New Delhi. This contention would have two components. First, whether the hierarchy in the Respondent- CBI entrusts Respondent No.2 with the investigation of this particular crime and, second, whether,

as a matter of fact, Respondent No.2 became responsible for directing investigation in this particular crime.

63. The Petitioner placed on record the CBI (Crime) Manual of 2005 issued by the Government of India. Clause-1.17 states that the administration of police establishment vests in the Director of CBI. The Director is assisted by Special/Additional Directors and Joint Directors. They are further assisted by Deputy Inspector General and Superintendent. Thus, the Director becomes the administrative head of CBI. Clause-1.18 refers to seven divisions of CBI such as Anti-Corruption Division, Special Crimes Division etc. The Anti-Corruption Division has its own head. Clause-6.1 refers to the Director of CBI. It is stated that the Special Director, Additional Director, and others will inform the Director of CBI of all important matters. His advice and instructions are to be obtained whenever considered necessary by the others. Therefore, the Director is to be kept informed and renders advice, if so sought. Regarding Anti-Corruption Division, certain information is to be given to the Director, which includes registration of cases upon reference from the Supreme Court and the High Court. The Manual only shows that the Director has a general administrative control. The Director, thus, has the power to verify the complaints in respect of persons in public life and registration of cases received in respect of high ranking persons. This is not relevant as the High Court ordered the preliminary enquiry, and the FIR was already

registered, and the same was being investigated. Therefore, there is nothing in the manner which shows that upon becoming the Director of CBI, Respondent No.2 became responsible for investigation in Crime No.RC2232021A0003/CBI/AC-5/New Delhi.

64. Now, we turn to the factual allegations made in the petition against Respondent No.2 as his role as a Director of CBI. In paragraph-21, it is stated that the Chief Secretary, Respondent No.5, has been summoned over every few days by Respondent Nos.1 and 3 “at the behest of Respondent No.2”. Firstly, this is a factually incorrect allegation as Respondent No.5 was not called over every few days. Since Respondent No.5 did not attend, the request to attend was reiterated. Secondly, it is not substantiated how it was done at the behest of Respondent No.2. Petitioner’s imputation is that it is Respondent No.2 who wanted to embarrass and harass Respondent No.5. This is again an unfounded allegation. In paragraph-22 of the Petition, it is stated that Respondent Nos.1 and 3 are determined to humiliate the senior-most officers of the State of Maharashtra. It is stated that they have been summoned just because to embarrass them and the Petitioner to sensationalize the investigation. This allegation is not only against Respondent No.3 but also against Respondent No.2 to attribute malice against Respondent No.2. In what manner Respondent No.2 was determined to harass and humiliate the Chief Secretary of the State

of Maharashtra, and the present DGP is not substantiated. Respondent No.3 is carrying on own investigation as directed by this Court, and he has requested the Chief Secretary and the present DGP to attend to which request they refused to accede. This is, therefore, one more unsubstantiated imputation against Respondent No.2 attributing malice. Therefore, the charge of malice imputed by the Petitioner in the petition is entirely unsubstantiated and will have to be rejected.

65. In ground-C of the Petition, Petitioner makes another imputation against Respondent No.2 that Respondent No.2 has a personal and vested interest in the manner and outcome of the investigation. This would mean that Respondent No.2 has an interest other than his official post as a Director of CBI. On what basis this allegation is made is not explained. What is the nature of vested and personal interest of Respondent No.2 is not explained. The learned ASG is right to seriously object to such imputation in the air without any proof. The petition is replete with adjectives and imputations calling upon this Court to infer the factual position and uphold the contention of *malafides* and bias. This imputation and allegation about a high ranking officer cannot be made in such a casual manner. The assertion that Respondent No.2 has a personal and vested interest in the manner and outcome of the investigation, for lack of any substantiation, has to be rejected.

66. The next ground on which the Petitioner has targeted Respondent No.2 is of conflict of interest. The concept of conflict of interest connotes that a person has incompatible interests. This is again an unsubstantiated allegation. As stated above, the investigation carried out by the Respondent- CBI is only regarding the concerned FIR in respect of the role of Ex-Home Minister in the matter of transfers and postings of police officers and overriding the statutory mechanism. The CBI is investigating the concerned FIR under the directions of this Court, and, therefore, how the conflict of interest arises is not explained by the Petitioner. It would be relevant to note here that when Respondent No.2 received a communication dated 25 August 2020 from Ms Rashmi Shukla, Commissioner of SID and after forwarding the same to Respondent No.5- the then Additional Secretary (Home), Respondent No.2 had recommended an immediate and comprehensive inquiry by the State CID (Crime), Pune. At that time, the response of Respondent No.5 was not that Respondent No.2 was involved in PEB-1 and PEB-2; no investigation, when he was head of the police force, should be carried out. Therefore, this conduct of Respondent No.2 asking immediate inquiry even though he was part of PEB-1 and PEB-2 shows that he had no conflict of interest whatsoever. His consistent stand has been that investigation should be carried out in the matter. Therefore, the allegation of conflict of interest on the part of Respondent No.2 is baseless.

67. The learned counsel for Respondent Nos 4 and 5 submitted that Respondent No.2 has not filed any affidavit in reply and, therefore, he is deemed to have accepted the contentions raised under the principle of non-traverse. It is submitted that howsoever high the position Respondent No.2 holds, he is not exempted from this legal requirement of filing a reply to counter the allegations, failing which it would be considered as an admission by non-traverse. The learned counsel for Respondent Nos.4 and 5 relied upon the decisions in *S.Pratap Singh v. State of Punjab*⁵; *C.S.Rawjee v. State of Andhra Pradesh*⁶; and *Padmakar Balkrishna Samant v. The State of Maharashtra*⁷ in furtherance of his submission that non-filing of reply by Respondent No2 is an admission on the principle of non-traverse. The learned counsel for Respondent Nos.4 and 5 sought to argue various grounds, but as rightly objected by the learned ASG, Respondent Nos.4 and 5 cannot argue anything for themselves in this petition, having not filed any independent petition.

68. Learned ASG submitted that to invoke the principle of admission by non-traverse; first, there should be pleading with credible assertions, and then only the burden will shift upon the respondent to file a reply.

69. On the ground of non-traverse, the first decision relied upon by Petitioner and Respondent Nos.4 and 5 is of *S.Pratap*

⁵ (1964) 4 SCR 733

⁶ AIR 1964 SC 962

⁷ AIR 1981 Bom 422

Singh. In this case, the appellant was a Civil Surgeon in the employment of the State Government. An enquiry was directed against him revoking his leave and placing him under suspension. The High Court dismissed the challenge to this order, and the appellant filed an appeal in the Supreme Court. In this case, the Supreme Court found that the principle of admission by non-traverse was applicable. However, the allegations in the writ petition were specific. They are referred to in paragraph-11 of the report. Here the appellant had specifically stated the role of the Chief Minister. There were as many as seven points with details of dates and names and specifications of which the allegations of *malafides* were made. Considering such detailed allegations, the Supreme Court found that the burden had shifted, and a reply ought to have been filed by the respondents therein. This case is, therefore, of a detailed pleadings in the petition, contrary to the present case.

70. In the case of *M.Gangappa v. State of Andhra Pradesh*⁸, relied upon by Respondent Nos.4 and 5, in furtherance of the submission based on the principle of admission by non-traverse, the facts were that the validity of a scheme under the Motor Vehicles Act was under challenge. The allegations of political interference were made with specific details. The Supreme Court set out the factual avertments in the matter in paragraphs- 13 and 14 of the judgment. These showed specific details. After a detailed factual foundation was laid, a one-line reply was filed by the secretary of the

8 AIR 1964 SC 962

home department of that State, that allegations were untrue. It is in this context that the Supreme Court found that detailed allegations were made which had a foundation, and the inference drawn from the facts in the absence of denial has to be taken true to proceed to hold against the respondent. This decision is not applicable to the present case.

71. As regards the decision of learned Single Judge of this Court in *Padmakar Samant*, where the learned Single Judge observed and held against the then chief minister for not filing an affidavit and invoked the principle of admission by not-traverse. Here allegations were made of the distribution of cement in the State of Maharashtra in violation of the procedure established by law. The allegations in the petition were specific and with particulars. The averments in that petition have been reproduced in paragraph-7 of the judgment of the learned Single Judge. Averments give details of time, place, and quantity, such as how a named developer paid a particular amount on a specific date and received cement of a quality on a particular date. Therefore, a clear factual foundation was laid in support of the allegations. With such particulars, the learned Single Judge observed that if the Chief Minister had filed an affidavit, it would have assisted the Court, which was not filed despite giving opportunity. In contrast, the allegations made in this petition that we have referred to earlier are nothing but adjectives. Therefore, none of these decisions would assist the Petitioner and Respondent

Nos.4 and 5 to contend that there are admissions by Respondent No.2 by non-traverse.

72. It is not the position of law that moment any unsubstantiated and general allegations are made against the person holding an official post, and if he does not file affidavit-in-reply, the Court will straightway proceed to apply the principle of admission by non-traverse without examining whether the Petitioner itself has discharged its initial burden. In the case of *Romila Thapar v. Union of India*⁹, the Supreme Court observed that specific material facts and particulars are needed to allege *mala fide* exercise of powers by the investigating officer. Paradoxically, the argument of non-traverse is advanced by Respondent Nos.4 and 5, who themselves have not filed any petition making any statement on oath, and the allegations are made against Respondent No.2 by the Joint Secretary of the Home Department who has pleaded no particulars, yet Respondent Nos.4 and 5 have sought to argue the contentions of bias. Also it was unnecessary for Respondent No.2 to file a reply regarding the allegation of harassment as the record itself does not show harassment. We have already analyzed the pleadings of the Petitioner and have found to be bereft of any particulars. Since the Petitioner itself has not discharged onus as required in law to substantiate the grounds made in the petition of malice, *malafides* and bias in law, no burden had shifted on Respondent No.2 to reply. In any case, a reply was filed by Respondent No.3, who is carrying

⁹ (2018) 10 SCC 753

out the Investigation.

73. It was sought to be contended by the learned ASG that Respondent No.2 is not joined in his personal capacity and merely by writing his name before the designation is not sufficient. Learned counsel for the Petitioner submitted that this is a needless technical objection, and Respondent No.2 is joined by name, and because he is a Director, a reference is made to the post. This issue is not pertinent as the moot question is whether the allegations are substantiated and whether the threshold was crossed, which necessitated Respondent No.2 to file a reply. This question is required to be answered against the petitioner.

74. It was then contended by the Petitioner that the very fact that Respondent No.2 was involved being part of PEB-1 and PEB-2 and would be at least a witness, if not a potential accused in the matter of transfers and postings of police officers in question and is heading the institution which is now carrying on investigation and, therefore, there is a likelihood of bias as a general principle and such investigation would not be fair and impartial.

75. We may note here that this argument of real likelihood of bias, as per the pleadings in the petition, is an alternative argument. In pleadings, the grounds of actual malice and malafides are taken at the forefront. When it was demonstrated by the Respondent- CBI

that these grounds are not established in law and fact, during the argument in rejoinder that the Petitioner primarily focused on the reasonable likelihood of bias. We have examined the role of Respondent No.2 both, as a DGP of Maharashtra and Director of CBI and also the functions of the posts and have held that there is no such reasonable apprehension but merely a created one. We now refer to the decisions cited by the Petitioner. The Petitioner has relied upon various decisions as regards the reasonable likelihood of bias. These are *Ratan Lal Sharma v. Managing Committee, Dr.Hari Ram (Co-Education) Higher Secondary School*¹⁰; *Institution of Chartered Accountants v. L.K.Ratna*¹¹; *State of Gujarat v. Justice R.A.Mehta (Retired)*¹², *Mukesh Singh v. State (Narcotic Branch of Delhi)*¹³; *A.V.Belarmin v. Mr V.Santhakumaran Nair*; *Rubabbuddin Sheikh v. State of Gujarat*¹⁴; and *R.S.Lodhi v. State of U.P.*¹⁵. The Respondent- CBI has contended that mere apprehension without any factual foundation cannot be a ground for the real likelihood of bias, and there are no averments to that effect. It was submitted that the decisions cited are not applicable and are on different set of facts.

76. In the case of *Ratan Lal Sharma*, cited by the Petitioner, the appellant was a Principal of Higher Secondary School who was suspended, and a charge-sheet was issued to him. An enquiry was

10 (1993) 4 SCC 10

11 (1986) 4 SCC 537

12 (2013) 3 SCC 1

13 (2020) 10 SCC 120

14 (1020) 2 SCC 200

15 (1994) Supp (1) SCC 143

conducted, and the inquiring committee found the appellant guilty; and therefore, the appellant was dismissed from the services. The appellant made representation for inspection of certain documents, which was refused. The appellant attributed specific bias against one of the inquiry committee members. The Supreme Court found that it was not only a reasonable apprehension but real apprehension when the member of the committee against whom bias was demonstrated had appeared as a witness against the appellant. Therefore, this case is clearly distinguishable on facts. Furthermore, the grievance of the likelihood of bias was made before the Court by the person directly affected by the outcome of the enquiry and the consequential order. The decision of *L.K.Ratna* arose from the proceeding before the disciplinary committee wherein the delinquent chartered accountant was accused of misconduct. In this context, the Supreme Court invoked principles of natural justice against the appellant being the judge of own cause. Again this decision is not applicable as it is a case of specific order passed to the detriment of an individual who had invoked the principle of bias. Both the above cases are in respect of *quasi-judicial* powers.

77. In the decision in the case of *R.A.Mehta*, the Supreme Court had an occasion to consider the ground of bias in the matter of judicial review. The Supreme Court observed that there may not be a case of actual bias or apprehension, but where there are circumstances to create reasonable apprehension in the mind of

others that likelihood of affecting the decision, it is sufficient to invoke the doctrine of bias. This observation was made in the context of final determination as referring to a judgment and order. Controversy in the case of *R.A.Mehta* related to the appointment of a Lok Ayukta in the State of Gujarat. The Governor appointed the respondent therein as the Lok Ayukta. The State of Gujarat challenged the appointment of the respondent. The Petition was dismissed. The state of Gujarat filed an appeal in the Supreme Court. The Supreme Court considered various issues regarding the selection and appointment of Lok Ayukta and statutory provisions governing the same. The Supreme Court dismissed the challenge made by Gujarat Government. As regards the preconceived notions in the mind of the Lok Ayukta and the suitability of a person to be appointed as Lok Ayukta, the Supreme Court observed that there are sufficient safeguards in the statute. In this case, therefore, there existed a preconceived notion that was established as a matter of fact. In the case at hand, the argument of a reasonable likelihood of bias is merely a phrase that is not substantiated.

78. The decisions in the case of *Amarnath Chowdhury v. Braithwaite & Co.Ltd.*¹⁶; *Cantonment Executive Officer v. Vijay D. Wani*¹⁷; and *Narinder Singh Arora v. State (Govt. of NCT of Delhi)*¹⁸ on the aspect of bias were rendered either in the context of disciplinary enquiry or in judicial proceedings. These, therefore, do

¹⁶ (2002) 2 SCC 290

¹⁷ (2008) 12 SCC 230

¹⁸ (2012) 1 SCC 561

not apply to the facts of the present case. There is no purpose in multiplying the references to judicial proceedings to burden the record, if they arise in different factual and legal positions.

79. In furtherance of the contention that the investigation in the offence must be free from objectionable features and the investigating agency cannot be permitted to investigate in an unfair manner, the Petitioner has relied upon the decision in the case of *Babubhai v. State of Gujarat*¹⁹. In the case of *R.S.Sodhi v. State of U.P.*²⁰, the Supreme Court transferred the investigation stressing the need for an independent investigation. In this case, a person was killed in an encounter and the local police were involved in the encounter. It is for that reason the case was transferred to CBI as there was deep involvement of the local police force in the actual incident. The facts are not comparable to the facts of the present Petition. In fact, they support the conclusion of this Court in the order dated 5 April 2021 to entrust the investigation to CBI in the light of the role of Ex-Home Minister. In the case of *Rubabuddin Sheikh v. State of Gujarat*²¹, the Supreme Court found that the investigation was not proper, and there was the involvement of the police force of the State in the crime. The Court found that there were large and various discrepancies in the investigation by the State police force, and the investigation was going in the wrong direction. The Court found that an attempt was made by the investigating

¹⁹ (2010) 12 SCC 254

²⁰ 1994 Supp (1) SCC 143

²¹ (1010) 2 SCC 200

agency of the State to mislead the Court. Therefore, on facts, the Supreme Court found that there was a total failure on the part of the State police force to carry out a fair and impartial investigation. The propositions of law in these decisions are settled, however, whether there is cause for the Petitioner in this petition to make this grievance is the question, answer to which is against the Petitioner.

80. In the case of *Mukesh Singh v. State (Narcotic Branch of Delhi)*²², the Supreme Court observed that whether the investigation is fair or not is to be decided at the time of trial. The Supreme Court referred to Illustration (e) to section 114 of the Evidence Act, 1872 that there is a presumption in favour of official act and the allegation of fair and unfair investigation has to be decided on a case to case basis without universal generalization. As noted earlier, the Petitioner before us is basing its case of likelihood of bias on generalization.

81. In the case of *Simrajit Singh Mann v. Union of India*²³, the leader of the opposition in the State had sought to quash the death penalty imposed on some accused. The Supreme Court observed that unless the aggrieved party is under some disability recognized by law, the third party should not be allowed to question the action against such a person. The Supreme Court in this decision referred to the observations made by the High Court with

²² (2020) 10 SCC 120

²³ (1992) 4 SCC 653

approval that even if questions of law are to be deeply gone into and examined in a criminal case of this nature, it is for the specific accused persons and for them alone to raise such questions and the challenge the proceeding initiated against them and not by the third parties under the garb of general public interest. This observation is directly applicable and is against the Petitioner.

82. One more argument of the Petitioner is that since the Division Bench in the order dated 5 April 2021 entrusted the investigation to the Respondent- CBI on the ground that the Ex-Home Minister, who was the head of the police force, would be in a position to influence the investigation, the same criteria should apply to the Respondent- CBI after Respondent No.2 became the Director of CBI. This argument is without any merit. There were allegations made against the Ex-Home Minister, and a complaint was filed, and it is in the context of the specific allegations against the Home Minister by high ranking police officers with specific details that the Court passed an order to entrust the investigation to CBI. There is no such imputation against Respondent No.2. Furthermore, the Division Bench entrusted the investigation to the Respondent- CBI observing that fair and impartial investigation in this particular case is not possible with the police force of the State of Maharashtra. This order was challenged in the Supreme Court, and the challenge was rejected even though Mr Anil Deshmukh, the then Home Minister, had tendered his resignation.

83. Another debate was the objection of the learned ASG that when Criminal Writ Petition No.1903/2021 was heard and before it was decided Respondent No.2 was appointed as Director of CBI and yet the Petitioner took no grounds that are agitated before us now. It was also contended that after the Division Bench rendered the decision in the aforesaid petition on 22 July 2021, an SLP was filed on 30 July 2021, which was rejected on 18 August 2021; however, even in the SLP, this ground was not taken. The Petitioner contended that the relief that is sought in the present petition could not have been asked in Criminal Writ Petition No.1903/2021, and the prayers made therein were totally different, and also Respondent No.2 was not a party to that petition. It was contended that in the said petition the prayer was for quashing 4th and 5th unnumbered paragraphs of the FIR, and in the present petition, the State is praying for constitution of SIT, and these two prayers are different and, therefore, there is no constructive *res judicata*.

84. Assuming that the concept of constructive *res judicata* is not to be applied, the fact remains that the challenge was available to the Petitioner when Criminal Writ Petition No.1903/2021 was pending, and it was also available when the SLP was filed in the Supreme Court. It was argued before the Division Bench that the unnumbered 5th paragraph of the FIR is in respect of transfer and posting of police officers, and this cannot be a part of the

investigation by the CBI. Therefore, the Petitioner did not want the aspect of transfers and postings of police officers to be investigated by the CBI. At that time, Respondent No.2 had already become the Director of CBI and, therefore, it could have been argued, as has been argued before us, that the CBI is now not competent to investigate this aspect. If not in the High Court, at least when the SLP was filed, the Petitioner could have taken this ground before the Supreme Court, but it was not taken. The Court will have to take note of this conduct of the State of Maharashtra to bring challenges one after another in context of the argument of the Respondent- CBI that sole intention of the Petitioner is to create hurdles in the investigation.

85. During the hearing, in response to the allegation in ground-H of the petition that investigation is carried out in a mala fide manner, the Respondent- CBI volunteered to place the papers of the investigation for the perusal of the Court in a closed envelope to satisfy the conscience of the Court that the investigation is not carried out in a *mala fide* manner and there is justification for the same. The Petitioner opposed for taking these closed envelopes on record. When the oral arguments on merits were concluded, we heard the learned counsel for the parties on request of the Respondent- CBI to place the papers of investigation for the perusal of the Court in sealed envelopes. We passed an order referring to the decisions in the case of *P. Chidambaram v. Directorate of*

*Enforcement*²⁴ and *P.Chidambaram v. Directorate of Enforcement*²⁵ wherein the Supreme Court has concluded that the Court can peruse the material collected during an investigation by the prosecution to satisfy its conscience as to whether the investigation is proceeding in the right direction. After perusal of the investigation papers, we can say that the allegation made by the Petitioner that the investigation is being carried out in a *mala fide* manner is not warranted. Since the investigation is ongoing, we do not wish to elaborate and comment on the contents of the investigation papers any further.

86. Therefore, there is no substance in the contention of Petitioner that because Respondent No..2 is now the director of CBI, Respondent CBI is not competent to carry on with the investigation. Tying these facets with the Petitioner's conduct noted earlier, it appears to us that this submission of the Petitioner based on the role of Respondent no.2 is only an attempt by the Petitioner to take the investigation somehow away from the Respondent CBI so that it does not proceed. Apart from being without merit, this challenge based on the role of the Respondent no.2 lacks bonafides.

87. To conclude, considering the totality of the circumstances including the conduct of the Petitioner as noticed by the judicial orders and manifested from the record, the Petitioner is not entitled to any relief in this Petition. There is no substance in

24 (2019) 9 SCC 24

25 (2020) 13 SCC 791

the contention of the Petitioner that the Respondent- CBI is disentitled to carry out investigation in the matter. No case is made out for withdrawing the investigation from the Respondent- CBI and entrust it to the Special Investigation Team as prayed for.

88. Before parting, we clarify that our observations in this judgment as regards conduct and *bona fides* of the Petitioner are not to be construed as an indictment of the State of Maharashtra in general but they are in context as a party in this litigation and as an adjudication of the issue raised in this petition.

89. As a result, the Writ Petition is dismissed. Rule is discharged.

90. Two sealed envelopes, which were tendered by the Respondent- CBI referred to in paragraph-85 of the judgment, be returned to the Respondent- CBI.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)