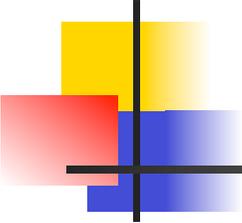


CLEP PRESENTATION

By:- Ankur Sharma & Anurag Kumar



SUPREME COURT JUDGEJMENT

Judgment Dated -06/05/14

Pronounced by - R.M.Lodha,CJI

In the Matter :-

Subramanian Swamy

Vs.

Director, Central Bureau of Investigation & Anr.

Writ Petition (Civil) No. 38 of 1997

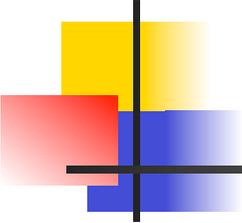
WITH

Centre of Public Interest Litigation

Vs.

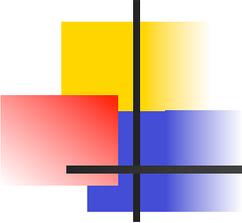
Union of India

Writ Petition (Civil) No. 21 of 2004



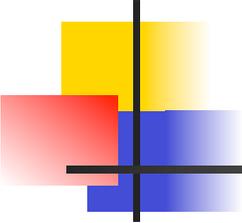
Facts & Issues

- **Constitutional validity of Section 6 A of the Delhi Special Establishment Act, 1946 is in issue in these two writ petition, both under Article 32 of the constitution. Since section 6 A came to be inserted by Section 26(c) of the Central Vigilance Act, 2003.**
- **The issue to determined was whether arbitrariness and unreasonableness or manifest arbitrariness and unreasonableness, being facets of Article 14 of the constitution or not as grounds to invalidate a legislation?**



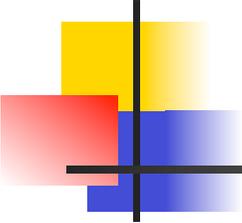
Background of Section 6-A

- In 1993, Vineet Narain approached the Hon'ble Supreme Court under Article 32 of the Constitution of India complaining inertia by the Central Bureau of Investigation (CBI) in matter where the accusation made was against high dignitaries.
- the Government decided to put the proposed law in place through an Ordinance so as to comply with the directions of this Court in *Vineet Narain's Matter* .
- the Government introduced the CVC Bill, 1998 in the Lok Sabha on 7.12.1998. & passes it as the CVC Bill, 1999 on 15.3.1999 but it could not go through as 12th Lok Sabha was dissolved on 26.4.1999.
- The CVC Bill was re-introduced with the title "The Central Vigilance Commission Bill, 2003".
- The Bill was passed by both the Houses of Parliament and received the assent of the President on 11.9.2003. This is how the Central Vigilance Commission Act, 2003 (for short, 'Act 45 of 2003') came to be enacted.
- Section 26 of the Act 45 of 2003 provides for amendment of DSPE Act and clause (c) thereof enacts that after Section 6, Section 6-A shall be inserted in the DSPE Act.



Section 6-A (1) of the DSPE Act.

Section 6-A(1) of the DSPE Act requires approval of the Central Government to conduct inquiry or investigation where the allegations of commission of an offence under the PC Act, 1988 relate to the employees of the Central Government of the level of Joint Secretary and above.

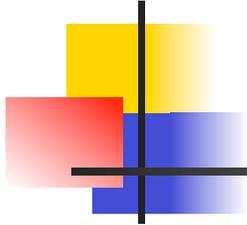


Relevant Articles/ Sections enforcing the Judgment

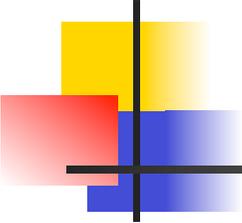
- **Article 14 reads:**

“Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

- Article 14 of the Constitution incorporates concept of equality and equal protection of laws. The provisions of Article 14 have engaged the attention of this Court from time to time. The plethora of cases dealing with Article 14 has culled out principles applicable to aspects which commonly arise under this Article.
- *The Hon'ble Supreme Court expounded the ambit and scope of Article 14 in Budhan Choudhary & Ors. v. State of Bihar [(1955) 1 SCR 1045] follows:*

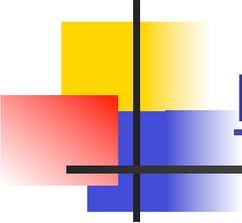


- **“It is now well-established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely,(i) that the classification must be founded on an intelligible differentiation which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that differentiation must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decisions of his Court that article 14 condemns discrimination not only by a substantive law but also by a law of procedure.”**



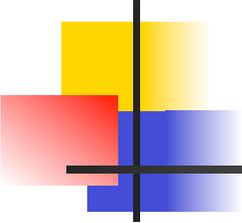
Court's approach

Where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that there is always a presumption of constitutionality of an enactment, and a clear transgression of constitutional principles must be shown. Where the legislation is sought to be challenged as being unconstitutional and violative of Article 14 of the Constitution, the Court must remind itself to the principles relating to the applicability of Article 14 in relation to invalidation of legislation. The two dimensions of Article 14 in its application to legislation and rendering legislation invalid are now well recognized and these are (i) discrimination, based on an impermissible or invalid classification and (ii) excessive delegation of powers; conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders – if such conferment is without any guidance, control or checks, it is violative of Article 14 of the Constitution. The Court also needs to be mindful that a legislation does not become unconstitutional merely because there is another view or because another method may be considered to be as good or even more effective, like any issue of social, or even economic policy. It is well settled that the courts do not substitute their views on what the policy is.



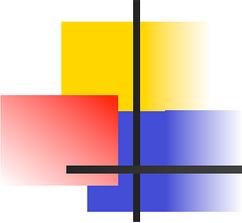
Decision of the Hon'ble Supreme Court of India

- **The Hon'ble Court held that Section 6 A which requires approval of the Central Government to conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 where such allegations relate to (a) the employees of the Central Government of the level of the Joint Secretary and above and (b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, government companies, societies and local authorities owned or controlled by the Government, is invalid and violative of Article 14 of the Constitution. As a necessary corollary, the provision contained in Section 26(c) of the Central Vigilance Act, 2003 to that extent is also declared invalid.**



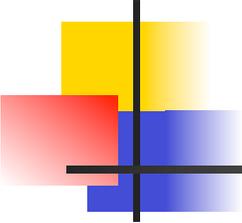
Summary & Observation

- **Criminal justice system mandates that any investigation into the crime should be fair, in accordance with law and should not be tainted. It is equally important that interested or influential persons are not able to misdirect or hijack the investigation so as to throttle a fair investigation resulting in the offenders escaping the punitive course of law. These are important facets of rule of law. Breach of rule of law, in our opinion , amounts to negation of equality under Article 14. Section 6-A fails in the context of these facets of Article 14.**



Summary & Observation

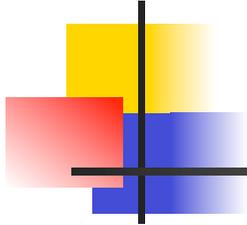
- **The essence of police investigation is skilful inquiry and collection of material and evidence in a manner by which the potential culpable individuals are not forewarned. The previous approval from the Government necessarily required under Section 6-A would result in indirectly putting to notice the officers to be investigated before commencement of investigation. Moreover, if the CBI is not even allowed to verify complaints by preliminary enquiry, how can the case move forward? A preliminary enquiry is intended to ascertain whether a *prima facie case for investigation is made out or not. If CBI is prevented* from holding a preliminary enquiry, at the very threshold, a fetter is put to enable the CBI to gather relevant material. As a matter of fact, the CBI is not able to collect the material even to move the Government for the purpose of obtaining previous approval from the Central Government.**



Questions

- Q. Whether the Hon'ble Court was correct in striking of Section 6 A of the Delhi Special Establishment Act, 1946 and did it justify the rationale for doing the same?**
- Q. What would be the repercussion and affects of the said judgment on the society and on the prevailing system at the governmental level?**

Our View

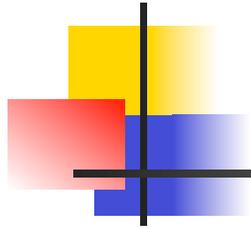


❖ This Landmark Judgment is very significant in uprooting the corruption within and at the highest levels of Bureaucracy without any discrimination.

❖ Provides more authority and power to the Investigating Agencies in order to prosecute the Senior Officers .

❖ It will provide strength and a boost to Anti-Corruption Campaign.

❖ This Judgment will strengthen the faith of the masses in the Judiciary .



Thank You
