

Module 1

Anti-Corruption and Enforcement Mechanisms Framework in India

Chapter 4

Landmark Judgements of Supreme Court and High Courts

The fluid and evolving nature of law and the contextual interpretations and judgments made on the same allows the legal system and judiciary to remain relevant. Further, liberal interpretations have allowed legal loopholes to be plugged to the extent possible. Certain landmark judgments which have shaped vigilance administration and are enumerated below:

Vineet Narain vs Union of India, 1993

<https://indiankanoon.org/doc/1203995/>

This case concerns the historic Hawala scandal in India, which uncovered possible bribery payments to several high-ranking Indian politicians and bureaucrats from a funding source linked to suspected terrorists. Following news coverage of the scandal, members of the public were dismayed by the failure of the Central Bureau of Investigation (CBI) to initiate investigations of the officials with the apparent intent to protect certain implicated individuals who were extremely influential in government and politics. This litigation was the result of public interest petitions filed on these matters with the Court pursuant to Article 32 of the Indian Constitution (which empowers the Supreme Court to issue directions for the enforcement of fundamental rights contained in the Constitution).

Judgement

The Court agreed that the CBI had failed in its responsibility to investigate allegations of public corruption. It laid down guidelines to ensure independence and autonomy of the CBI and ordered that the CBI be placed under the supervision of the Central Vigilance Commission (CVC), an independent governmental agency intended to be free from executive control or interference. This directive removed the CBI from the supervision of the Central Government.

IMPACT ON VIGILANCE ADMINISTRATION

Led to the Commission being accorded statutory status w.e.f. 25.08.1998 through the Central Vigilance Commission Ordinance, 1998 and finally the CVC Act came into force in 2003. The structural changes brought forth by the judgment sought to shield the CBI Director and allow more autonomy for the post for fair and objective investigations. The CVC was now responsible for ensuring that allegations of corruption against public officials were thoroughly investigated regardless of the identity of the accused and without interference from the Government.

Initiation of disciplinary proceedings against quasi-judicial authorities for their acts committed recklessly with mala-fide intentions – K K Dhawan Vs Union of India (1993)

An Income Tax Officer was charged u/r 14 of CCS (CCA) Rules, 1965 for doing 9 tax assessment in an irregular manner and hastily with a view to confer undue favour to the assesses and thus failed to maintain absolute integrity and devotion to duty. Against this Charge Memo he filed a case in the CAT for stay of disciplinary proceedings which were allowed by the CAT which held that action taken by the officer was quasi-judicial in nature and should not have formed basis of disciplinary action. Against this, Union of India preferred SLP in the Supreme Court.

Judgement

The Apex Court while deciding the appeal held that disciplinary action can be taken where the action of the officer impinges on his integrity / good faith / devotion to duty, if there is prima-facie material to show recklessness and show misconduct while discharge of duty, if he has acted in a manner which is unbecoming of government officer, if he has action negligently or that he omitted the prescribed conditions for exercise of statutory power, if he has acted to do unduly favour a part and if his action is actuated by corrupt motive.

Impact on Vigilance Administration

CVO while examining the quasi-judicial action of officers are expected to bear this criterion in mind while examining the various cases. After this judgement, an important criterion has been provided by the Court to take quick decisions in deciding on the need of disciplinary cases against quasi-judicial authorities.

Staying of disciplinary cases pending conclusion of criminal proceedings-State of Rajasthan vs B.K. Meena, 1996

<https://indiankanoon.org/doc/58259/>

A member of the IAS, working as Additional Collector, DRDA, Jaipur, was transferred from his said post. His successor lodged an FIR alleging misappropriation of public funds of Rs. 1.05 crore by BK Meena. On 31.03.1992, the State of Rajasthan requested the Govt. of India for grant of sanction for prosecution for respondent BK Meena under PCA, 1988. Disciplinary proceedings were also initiated. However, on 04.08.1993, at the instance of the respondent, the Central Administrative Tribunal stayed the disciplinary proceedings. The ground urged by the respondent was that departmental proceedings not be allowed to go on so long as criminal proceedings are pending against him. The matter was brought to Supreme Court by the State of Rajasthan on the judgement of the Tribunal allowing the stay.

Judgement

In law there is no bar to or prohibition against initiating simultaneous criminal proceedings and disciplinary proceedings. The staying of disciplinary proceedings is circumstantial with the only valid ground being that the defense of the employee in the criminal case should not be prejudiced, that too applicable only in cases of grave nature involving questions of law and fact.

In the interests of good administration, proceedings should be concluded expeditiously. Disciplinary proceedings are primarily meant for keeping the administrative machinery clean by purging it of undesirable elements. On the other hand, if a delinquent officer is not guilty of the charges levelled on him/her, then too expeditious conclusion of disciplinary proceedings is critical. Both cases, there is weightage for not staying disciplinary proceedings. Further, the approach and objective in the criminal proceedings and disciplinary proceedings is distinct, so is the mode and rules of enquiry.

In the instant case, the court felt that stay on disciplinary proceedings should be lifted.

IMPACT ON VIGILANCE ADMINISTRATION

The purpose underlying disciplinary proceedings is distinctly different from the purpose behind prosecution of offenders. Criminal prosecution is for violation of duty that the offender owes to society, disciplinary proceedings are aimed at maintaining discipline and efficiency in service.

Simultaneous proceedings of disciplinary and criminal nature allow the expeditious conclusion of departmental enquiries. There can be no single rule laid down for staying of disciplinary proceedings pending conclusion of criminal cases, and when exercised is only under certain circumstances.

Nagar Nigam, Meerut vs A1 Faheem Meat Export Pvt. Ltd., 2006

<https://indiankanoon.org/doc/540140/>

Nagar Nigam Meerut had invited applications through advertisement for granting a fresh contract for running a certain slaughter-house as maintenance of slaughter-houses, including auctioning property connected thereto, falls within its jurisdiction. The validity of this advertisement was challenged before Division bench of Allahabad High Court. Nagar Nigam Meerut questioned the legality of judgment passed.

Judgement

The main issue was the jurisdiction of High Court and whether it can challenge the administrative action of the state. However, in the course of its judgment stating that only violation of Article 14 would merit such interference, the Supreme Court also dealt with the issue of public tenders versus private negotiation. The Court referred to an earlier judgment while reiterating that State owned or public owned property is not to be dealt with at the discretion of the Executive. The Contracts by the State and its agencies must be normally granted through public auction/ public tender by inviting tenders from eligible persons and the notifications of the public auction / inviting of tenders should be advertised in well-known dailies having wide circulation with all the relevant details. Any other method, especially award of contract on nomination basis would be a violation of Article 14 of the Constitution, i.e. guaranteeing right to equality. Compulsion should dictate the measures adopted for auctioning property rather than convenience and that too should be exercised only in exceptional cases.

IMPACT ON VIGILANCE ADMINISTRATION

All official acts are to be actuated by public interest and transparency as well as the appearance of transparency both are essential in the matter of auctions. The need for award of contracts in a transparent and open manner has been emphasized. Except in rare and exceptional circumstances, public tendering is to be done to maximize economy and efficiency in Government procurement, for fair and equitable treatment of all tenderers and to eliminate irregularities, interference and corrupt practices by authorities concerned.

Jankiraman vs Central Vigilance Commission (CVC)

The case dealt with the issue of whether the CVC had the power to give sanction for prosecution against a public servant under the Prevention of Corruption Act, 1988.

Judgement

The Supreme Court held that the CVC did not have the power to give sanction for prosecution against a public servant and the power to do so was exclusively vested with the appropriate authority, which is usually the employer of the public servant. CVC's jurisdiction extended only to conducting an inquiry and making recommendations to the appropriate authority for granting or refusing sanction for prosecution.

IMPACT ON VIGILANCE ADMINISTRATION

It has ensured that the process of granting sanction for prosecution is fair and transparent and has provided a level of protection to public servants against malicious or frivolous charges. At the same time, the judgment has also emphasized the need for greater accountability and transparency in the functioning of public officials.

Departmental inquiry to be concluded within 6 months against delinquent employee-Prem Nath Bali vs Registrar, High Court of Delhi, Civil Appeal No. 958 of 2010

<https://indiankanoon.org/doc/173869274/>

The appellant, Mr Prem Nath Bali, joined the District & Sessions Court as a lower division clerk in 1965 and was promoted to upper division clerk in 1986. The incident took place when he was posted at Patiala House Court, New Delhi when he raised a complaint against the window clerk for failing to do her allotted work satisfactorily and requested her transfer on that ground. The clerk, Smt Brij Bala made her statement, on the same day, to her superior officer on her performing all allotted tasks. An altercation between Prem Nath Bali and Brij Bala led to a preliminary enquiry being conducted and then suspension of the appellant.

The disciplinary proceedings commenced in 1990 and continued for over 9 years. Meanwhile, the appellant sought revocation of suspension which was not considered. Two Orders were passed on 27.10.1999 and 28.10.1999

imposing a major penalty of compulsory retirement. The period under suspension was not taken into consideration for calculating pension. The Appellant filed an appeal first before Administrative Judge of HC of Delhi, then filed Writ petition in High Court which was dismissed and finally approached Supreme Court.

Judgement

Main issue was whether the principles of natural justice had been observed in the instant case. The Court found that the inquiry officer fully observed principle of natural justice while conducting the departmental proceedings. However, the court took objection to the unduly long suspension period and to the departmental inquiry as a whole. The court felt that period of suspension should be taken into account for determining the appellant's pension.

The court observed that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time. In cases of suspension, it becomes even more essential to complete the enquiry quickly. All departmental enquiries should be completed within a reasonable period of within 6 months, except in unavoidable circumstances when it should be completed within a year.

IMPACT ON VIGILANCE ADMINISTRATION

Timelines were fixed for completion of departmental proceedings and the accountability for ensuring the same is to lie directly with the employer.

CBI, BANK SECURITIES & FRAUD CELL VS RAMESH GELLI AND ORS (2013) <https://indiankanoon.org/doc/30121571/>

The CBI filed a charge sheet under Section 13(2) of the PCA against the chair and executive director of the Global Trust Bank (GTB). GTB was incorporated as a banking company under the Companies Act 1956 and was issued a licence under the Banking Regulation Act 1949 by the RBI.

The prosecution contended that in abuse of their position, certain officials of GTB had sanctioned credit limits to one of the companies from which they had raised capital. Subsequently, in 2004, GTB merged with public sector bank Oriental Bank of Commerce (OBC).

After investigations into the matter were concluded, charge sheets were filed before the special judge in Mumbai under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. However, the special judge declined to consider the offences punishable under the Prevention of Corruption Act on the grounds that the accused were employees of private banks on the dates that the alleged transactions took place and thus not public servants for the purposes of the Prevention of Corruption Act. The Bombay High Court upheld the special judge's order. The CBI appealed to the Supreme Court.

JUDGEMENT

The managing director and chair of a private banking company were held to be public servants for the purposes of prosecution under the Prevention of Corruption Act 1988 and the cases launched against the two accused employees of the private banking company were held to be maintainable under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. The Supreme Court held that for the purpose of construing the term 'public servant' under the Prevention of Corruption Act, the same must be purposively and harmoniously read with Section 46A of Banking Act.

IMPACT ON VIGILANCE ADMINISTRATION

The principles laid down by this judgment are indicative of the judicial mind to give effect to the spirit and intent of the Prevention of Corruption Act and not to let the legislature's inadvertent lapse prevent a broad interpretation to the term 'public servant' under the Prevention of Corruption Act.

Ashok Agarwal vs Central Vigilance Commission (CVC), 2017

<https://indiankanoon.org/doc/59688879/>

The case dealt with the question of the authority of the CVC to inquire into allegations of corruption against senior government officials. Ashok Agarwal, a senior government official, was accused of amassing assets disproportionate to his known sources of income. The CVC initiated an inquiry into the allegations and ordered the CBI to conduct a preliminary investigation. This was challenged on the grounds that the CVC did not have the authority to order such an inquiry and only a competent authority under the Prevention of Corruption Act had the power to do so.

JUDGMENT

The Supreme Court observed that the CVC was a statutory body empowered to exercise vigilance oversight over government officials and that its powers were not limited to cases where corruption had been established under the Prevention of Corruption Act. Hence, CVC had the power to inquire into allegations of corruption against senior government officials (including those relating to disproportionate assets). However, CVC could not, by itself, initiate a criminal investigation into corruption allegations. Such an investigation could only be conducted by the CBI or other competent authorities under the Prevention of Corruption Act.

IMPACT ON VIGILANCE ADMINISTRATION

The court clarified the powers and limitations of the CVC in relation to the investigation of corruption allegations against senior government officials and further, also laid down guidelines for the conduct of CVC inquiries, including the requirement of a prima facie case, the right to cross-examination, and the need for the inquiry to be completed within a reasonable time frame.

Protection under section 197 Cr PC-SK MIGLANI VS STATE, 2018

<https://indiankanoon.org/doc/45177896/>

The appellant Mr Miglani was working as an officer in a Public Sector Bank when an FIR was lodged against him at PS Kotla Mubarakpur based on accusations that he had authorized the opening of a fictitious saving bank account in connivance with co-accused Praveen Kumar, to facilitate encashment of a cheque amounting to Rs. 2,22,263/- issued by Delhi Development Authority obtained by way of a fraudulent refund. Mr Miglani moved an application seeking discharge on the ground that prosecution was initiated without sanction under Section 197 Cr PC. The chargesheet / supplementary chargesheet contained names of DDA officials and prosecution sanction had been taken for them from the Competent Authority. The Chief Metropolitan Magistrate (CMM) rejected the petition on the grounds that section 197 Cr PC provided protection to public servants who had allegedly committed offences in the course of their official duty. However, the act of forgery cannot be held to be performed in exercise of official duty. The petitioner approached the Delhi High Court to quash the order of the CMM.

JUDGEMENT

The Supreme Court upheld the decision of the CMM. However, the ground for upholding such decision was different from the one taken by CMM. Section 197 Cr PC says that when any person who is/ was a public servant *not removable from his office save by or with the sanction of the Government* is accused of any offence alleged to have been committed by him while acting/ purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with previous sanction. The appellant did not fulfil the conditions under which the section was to be applied i.e. not removable from his office save by or with the sanction of the Government and thus even if the appellant is held to be a public servant, provisions of section 197 will not be attracted at all.

Under the circumstances when the appellant did not fulfil conditions for applicability of section 197(I) of Cr PC, it is not necessary to evaluate whether the alleged acts are arising in the course of discharge of official duties or not.

Extent of protection granted to Public Servant u/s 197 of CrPC and role of sanctions from Competent Authority-Indira Devi vs the State of Rajasthan, Supreme Court of India, 23.07.2021

<https://indiankanoon.org/doc/79875124/>

Indira Devi, the appellant, along with her husband (both belonging to Scheduled Caste) had two plots in Barmer, Rajasthan, which they sold to one Megharam and Chetan Choudhary each. Megharam allegedly with an intention to defraud, enlarged the dimensions of the plot thereby committing forgery of documents.

An FIR was lodged against certain Public Servants/Government Officers claiming certain irregularities at their behest. This was done without obtaining prior sanction from the Government Department of the Public Servants. Out of the three Public Servants, two were accorded protection under Section 197 of CrPC, but one of the respondents, a clerk, moved an Application under Section 197 of CrPC claiming protection from prosecution. Section 197 of CrPC provides that when a public servant is accused of commission of any offence while acting in discharge of his duties, then the Courts shall take cognizance of such offence only after sanction for prosecution has been accorded in this regard by the Government. An appeal was made to Supreme Court after High Court gave the judgement that sanction was needed before triggering any prosecution against a public servant in the instant case.

JUDGEMENT

There were two main issues involved. One was whether the respondent had the right to seek protection under Section 197 Cr PC. Court observed that the purpose of this section is to protect the public servant from malicious and vexatious prosecution. The other respondents in the same case had been granted protection by lower courts and no objection had been raised to the same. However, section 197 CrPC cannot be used to protect corrupt officers.

Secondly, it had to be seen whether the act committed by the respondent was concerned with his official duties as public servant. Here, Section 197 of CrPC ought to be read in a liberal sense for grant of protection to the public servant with respect to actions, which though constitute an offence, are 'directly and reasonably' connected with their official duties.

Upon cumulative consideration of facts and circumstances, the Hon'ble Supreme Court held that sanction under Section 197 of CrPC would be required before triggering any prosecution against the Appellant.

IMPACT ON VIGILANCE ADMINISTRATION

The Court laid down the test for deciphering whether an act falls within the ambit of discharge of official duty or not. According to the Court, the alleged act or omission of the Public Servant must have a reasonable or direct connection with the discharge of his official duties, in order to attract requirement of obtaining prior sanction under Section 197 of CrPC.

Further, the protection afforded to a public servant was reiterated.