

SUPREME COURT OF INDIA

Common Cause (A Regd. Society)

Vs.

Union of India

WP(Civil)No.505 of 2015

(Arun Mishra and Mohan M.Shantanagoudar,JJ.,)

02.07.2018

JUDGMENT

Arun Mishra,J.,

1. The petition has been filed by the Common Cause (a registered Society) and others purportedly in public interest, a prayer has been made to issue an appropriate writ quashing the appointment of Mr. K.V. Chowdary, Central Vigilance Commissioner (in short ‘CVC’) and signal NML T.M. Bhasin, Vigilance Commissioner (in short, ‘VC’). The Union India had appointed Mr. K.V. Chowdary as CVC on 6.6.2015 and Mr. T.M. Bhasin as VC on 11.6.2015 for a period of four years. The main ground urged to quash the appointment is that it is illegal and void as there is violation of principles of impeccable integrity and institutional integrity laid down in the judgments of this Court in *Vineet Narain & Ors. v. Union of India & Anr*¹. and *Centre for PIL & Anr. v. Union of India & Anr*²..

2. In the writ petition filed by the Centre for Integrity, Governance, and Training in Vigilance Administration and another, a prayer has been made to direct the Union of India and/or its instrumentalities to provide for minimum number of years of knowledge and experience in the field of vigilance for being appointed as CVC or VC. During the pendency of the writ application, with the permission of the court, this Court had permitted respondent No.1 to proceed with the appointment of CVC and VC under section 4(1) of the Central Vigilance Commission Act, 2003 (for short, “the Act”) subject to the decision of the petition. The appointments have been made and the challenge is confined to the appointments of CVC and VC.

3. It is urged by the Common Cause Society that Central Vigilance Commission is, in the absence of a Lokpal, India’s top anti-corruption body. The Commission is considered the apex integrity and watchdog institution of the country. Apart from overseeing the vigilance administration, it has also the power of superintendence over the CBI in corruption cases and is also the designated agency for protection of the whistle-blowers to examine their complaints. It oversees functioning of the Central Government and its instrumentalities.

4. This Court in Vineet Narain (supra) has observed that Central Vigilance Commission shall be given statutory status. The Selection Committee has to select a person of impeccable integrity and the appointment shall be made by the President. Pursuant thereto, Parliament has enacted Central Vigilance Commission Act, 2003 and Selection Committee comprises of the Prime Minister, the Home Minister, and the Leader of the Opposition.

5. In Centre for PIL (supra) this Court had quashed the appointment of the then CVC by declaring decision of Selection Committee to the President for appointment as non-est. It was observed by this Court that the activity of decision making process has to ensure that the powers are exercised for the purpose and in the manner in which the said Act provides otherwise the recommendation has no existence in the eyes of law. This Court directed that the legality of the exercise of selection is subject to judicial review. All civil servants and other persons empaneled shall be outstanding civil servants or persons of impeccable integrity, made on rational criteria reflected by recording vigilance and/or notings akin to reasons. Complete information with material and data whether favourable or adverse has to be forwarded. Nothing material or relevant should be withheld. Contemporaneous service record, even adverse remarks, are specifically to be brought to the notice of Selection Committee. Process of selection by the Committee has to be fair and transparent.

6. It is averred in the petition that the absolute requirement is that Central Vigilance Officer should have unblemished record of service. The appointment of Mr. K.V. Chowdary, respondent No.2 as CVC has been assailed on the basis of facts mentioned in the complaint. Prior to that, he was the Chairperson of CBDT and Advisor to the SIT on black money. Before his appointment, several representations were made to the Prime Minister of India, who heads the selection panel as provided in section 4 of the Act. As it transpired that the Government had made up its mind to appoint respondent No.2, representations were made giving specific reasons as to why he was not eligible and suitable for heading the Commission. Despite representations, his appointment had been made. Firstly, it is submitted that Mr. K.V. Chowdary had been meeting with the then CBI Director Mr. Ranjit Sinha and had been regularly meeting the accused in the cases investigated by the CBI in the 2G scam cases. This Court had directed on 20.11.2015 in Civil Appeal No.10660 of 2010, the CBI Director not to interfere in the investigation process carried out by the CBI in the 2G scam case and to recuse himself from 2G scam case. This Court had also observed in the judgment dated 14.5.2015 in Writ Petition [C] No.463 of 2012 that Mr. Ranjit Sinha's meetings with accused in coal scam were completely inappropriate, and his role in allegedly scuttling investigations in coal scam case needs to be investigated.

7. It is further averred in the petition that Mr. Ranjit Sinha, Director of CBI met Mr. K.V. Chowdary when he was probing the dealings of and intercepted conversation of hawala dealer Mr. Moin Qureshi who was known to Mr. Ranjit Sinha and who had met him approximately 90 times at his residence. These meetings also took place when Mr. Ranjit Sinha/CBI was investigating "Stock Guru Scam" where senior income tax officers were involved and the CBI was investigating the role of respondent No.2. The CBI inquiry had found that senior income tax officer had taken bribes for showing favours to scamsters and

had also misappropriated over Rs.40 crores. The officers who were involved were working directly under Mr. K.V. Chowdary, respondent No.2.

8. The Income Tax Department in its report on Mr. Moin Qureshi gave a clean chit to Mr. Sinha and CBI gave a clean chit to respondent No.2 in Stock Guru scam. Thus, respondent No.2 Mr. K.V. Chowdary and CBI Director, Mr. Ranjit Sinha helped each other in the investigation being carried out by the agencies under them.

9. One Mr. Anil Kumar Agarwal had made a complaint to the Finance Ministry on 10.6.2014 pointing out the manner in which respondent No.2 was being shielded in Stock Guru scam. Earlier respondent No.2 had taken credit for taking action against Stock Guru before the scam involving income tax officers came to light. He could not distance himself from the scam as the entire episode happened under his watch.

10. Respondent No.2 had abused his position as Member (Investigation), CBDT to under-assess the income of the company M/s. Flora and Fauna Housing & Land Development Pvt. Ltd. which is associated with infamous Mr. Ponty Chadha. The under-assessment was to the extent of Rs.234/- crores. Mr. K.V. Chowdary followed a procedure allegedly unknown to law by giving direction to the assessing officer to dispose of the case in a particular manner whereas no such direction could have been issued.

11. It is further averred in the petition that one of the members of the Common Cause Society made the following allegations in the representation:

(i) that Mr. Chowdary was in charge of the investigation of illegal account holders in foreign countries in HSBC Bank, for almost three years and until this Court appointed the SIT on black money, there was almost no progress in income tax investigation, and the income tax department had not filed even a single prosecution case against HSBC account holders.

(ii) that Mr. Chowdary was investigating the Radia tapes and did not take any action on evidence available with him.

(iii) that he was also investigating the income tax cases in the 2G scam and failed to take any action unlike the CBI or the ED which filed several charge-sheets.

12. As against respondent No.3, Mr. T.M. Bhasin appointed as VC the case set up by the petitioner is that he had been serving as the CMD in the public sector Indian Bank from 1.4.2010 with its headquarters in Chennai, who was indicted in a detailed inquiry by the CVC in 2013 for forging and tampering with the appraisal report of the then General Manager of Indian Bank which is a criminal offence. One Mr. Malay Mukherjee in this connection had complained on 11.7.2011 that his Annual Performance Appraisal Report (APAR) has been tampered. It was found by the Commission that APAR was mala fide tampered and forged and grading of 'excellent' was substituted by 'average' with a view to destroy the career of Mr. Malay Mukherjee. It was a criminal offence for which investigation

was suggested to establish the facts. However, another VC had stated that departmental action be taken. The then CVC approved departmental action. On that office memorandum dated 11.12.2012 was issued to Department of Financial Services (DFS), Government of India to take departmental action against Mr. Bhasin.

13. In response to the aforesaid, the Department of Financial Services wrote to the Commission that departmental action may not stand scrutiny of law. The opinion was reiterated by the then VC which was approved by the CVC, however, Department of Financial Services said that the matter ought to be closed and Mr. Bhasin was cautioned. The same was approved by the Commission and was carried out by the Government of India. It is averred that yet another important political functionary wrote a letter to the Prime Minister on 11.6.2015 stating that charge against Mr. Bhasin was very serious and the recommendation of Selection Committee to appoint him must be withdrawn. Thus, Mr. Bhasin by no stretch of imagination can be said to have impeccable integrity or unblemished record as per the requirement of law. Thus, the appointments are illegal, arbitrary, in negation of rule of law and therefore in violation of Articles 14 and 16 of the Constitution of India. It is averred that transparency was not followed and there was no scope for public inputs. Complaints made against respondent Nos. 2 and 3 were not duly considered. Thus, transparency was not observed. Non-production of serious adverse material and representations against respondent Nos. 2 and 3 would vitiate the appointment process and in case material was produced, and despite that appointments were made, then the appointments would be mala fide, arbitrary and illegal.

14. In the counter affidavit filed by respondent No.1 in case of Common Cause, as per section 3(3) of the Act, for appointment to the post of CVC as well as VC, the person must have knowledge and experience in the matters relating to (a) vigilance, (b) policy making and (c) administration including police administration. Therefore, fixing minimum years of experience exclusively in any of the above fields would be contrary to the expressed legislative intent which requires that such person must have knowledge and experience in all the three fields. The decision of this Court in Centre for PIL (supra) has been relied upon. The guidelines laid down therein have been duly complied with. The guidelines framed provided the criteria as well as the procedure to be followed, inviting nominations, shortlisting of eligible candidates, final selection, to be made by the Committee. The vacancies inviting applications for the posts of CVC and VC were issued by respondent No.1 vide O.M. dated 13.10.2014. It was uploaded on the website of Department of Personnel & Training (DoPT) and the advertisement published in newspapers also referred to the vacancy circular. The process adopted by respondent No.1 included inviting applications through advertisement from all eligible persons, thereafter scrutiny and sorting of the applications under a welldefined criterion was done by a Committee of Secretaries and, thereafter, the list was furnished to the Committee as provided in section 4 of the Act. A fully transparent process had been adopted. Office Memorandum dated 13.10.2014 has prescribed eligibility and other requirements as under:

“Section 3(3) of the Central Vigilance Commission Act, 2003, provides that the Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons -

(a) who have been or are in an All-India Service or in any civil service of the Union or in a civil post under the Union having knowledge and experience in the matters relating to vigilance, policy making and administration including police administration; or

(b) who have held office or are holding office in a corporation established by or under any Central Act or a Government company owned or controlled by the Central Government and persons who have expertise and experience in finance including insurance and banking, law, vigilance, and investigations :

Provided that, from amongst the Central Vigilance Commissioner and the Vigilance Commissioners, not more than two persons shall belong to the category of persons referred to either in clause (a) or clause (b). In case of persons falling under section 3(3)(a) of the Act as above, such persons, preferably, have held or is holding the post of a Secretary to the Government of India or any equivalent post thereto under the Central Government.

In case of persons falling under the first part of section 3(3) (b) of the Act as above, the person must have held or is holding the position of Chairman/Managing Director/Chief Executive Officer of a Schedule “A” Central Public Sector Enterprise and has served as a whole time Director on the Board for a period of at least 3 years. In respect of persons who have expertise and experience in finance, including insurance and banking, law, vigilance and investigation and falling under the second part of section 3(3)

(b) of the Act as above, such persons must have acquired eminence and have outstanding achievement in the said fields(s) provided that such persons who are in employment in a private company must have held or is holding the position of Managing Director/CEO, as a Whole-Time Director on the Board of the Company for a period of at least three years.

All the applicants should be of outstanding merit and impeccable integrity and should have knowledge and at least 25 years of experience in the relevant field(s).

The applicants should not be more than 62 years of age as on 1st January 2015 so that the persons to be considered for selection will get at least 3 years tenure as a Central Vigilance Commissioner or the Vigilance Commissioner.”

15. Experience of 25 years has been prescribed in the relevant field(s). Advertisements were published in three leading newspapers, i.e., Times of India, The Hindu, and Dainik Bhaskar (Hindi Daily) in all their editions in India on 14.10.2014 inviting applications for the

aforesaid posts. The last date of receiving the applications was 5.11.2014. It was also uploaded on the website ‘www.persmin.nic.in’ by Do PT. The publication has been certified as per the communication received from the Directorate of Advertising and Visual Publicity (DAVP), Ministry of Information & Broadcasting, it has been placed on record. Multiple channels of communication were utilised to give wide publicity to the advertisement.

16. Pursuant to the advertisement, total 132 applications were received for the said posts, out of which 120 were received by the cut-off date. Following is the data of the applications received :

S.No.	Under Category of the CVC Act, 2003	No. of applications received for CVC post	No. of applications received for VC post	No. of applications received after 5.11.2014
1.	3(3)(a)	48	43	08
2.	3(3) (b) category - I	05	19	02
3.	3(3) (b) category - II	03	02	02
		56	64	02
Total			132	

The shortlisting was done by a Committee comprising of the Cabinet Secretary, the Secretary (Department of Financial Services) and the Secretary (Personnel). In the meeting dated 9.4.2015, the Committee went through the relevant record, scrutinized all the applications and examined the experience of each candidate and shortlisted a panel of 12 names for the post of CVC and 10 names for the post of VC for placing before Selection Committee for consideration.

17. It is further contended by respondent No.1 that the first meeting of the Committee headed by the Prime Minister was held on 23.5.2015 which was attended by the Home Minister and the leader of Congress Legislative Party. The Committee went through agenda containing the details, notwithstanding the shortlisting of details of all the 132 applicants and decided to obtain further information of certain candidates.

18. On 23.5.2015, a communication was received from the PMO containing extracts of all allegations from a representation made by one of the members of the Common Cause vide his letter dated 20.5.2015 and requesting for inputs on the said allegations against Mr. K.V. Chowdary. The same was sent on 25.5.2015 to CBI and the Department of Revenue for their inputs. The PMO also requested the IB on 23.5.2015 to provide their inputs. The following replies were received:

“(i) The reply of CBI was received on 29.05.2015 and is part of the record that was placed before the Committee.

(ii) Two replies were received from the Department of Revenue on 27.05.2015 and is part of the record that was placed before the Committee.

(iii) Inputs from IB were received in PMO on 26.05.2015 and in DoPT on 28.05.2015 and is part of the record that was placed before the Committee.

(iv) A reply on ACR was received on 29.05.2015 and is part of the record that was placed before the Committee.”

19. The Agenda note for the second meeting to be held on 1.6.2015 was circulated on 27.5.2015 which included the details of all complaints against various candidates including the closed complaints. With respect to Mr. K.V. Chowdary, it was mentioned in the agenda note that other inputs will be placed before the Committee during the meeting as some inputs were awaited. Accordingly, additional inputs with the gist of the complaints regarding Mr. K.V. Chowdary were placed before the Committee in the second meeting held on 1.6.2015. The gist with annexures at correspondence containing plethora of documents of File No.399/15/2014-AVD-III was made available. Not only the complaints/documents but a brief summary of the complaints and the inputs obtained from various agencies including the gist of the note for Mr. K.V. Chowdary were also placed before the Committee. The gist included the details and the inputs received from various agencies like CBI, IB, and Department of Revenue. On 1.6.2015 a letter from the Department of Revenue was received stating that no adverse remarks have been found in the Appraisal Performance Report of available ACRs. of Mr. K.V. Chowdary for the period from 1978 to 2013-14. Letter dated 26.5.2015 of another public functionary regarding Mr. K.V. Chowdary was also placed before the Committee.

20. It is further contended that the details of the complaints including the closed complaints against Mr. T.M. Bhasin along with inputs in relation to the same were also part of the agenda at para 3.7 and Annexure E which was placed before the Committee. The Committee after taking into consideration all the material placed before it recorded thus:

"The representations received from Shri Prashant Bhushan, Anil Kumar Agrawal and Shri Ram Jethmalani relating to Shri K.V. Chowdary had been sent earlier to Department of Revenue, Ministry of Finance, Intelligence Bureau, and the CBI for their comments. The above letters and comments of the agencies concerned were placed before the Committee. Another complaint received by the CBI relates to the case of M/s. Flora and Fauna Housing and Land Development Pvt. Ltd. about an unaccounted income of Rs.234 crores. This was also a part of the complaint made by Shri Prashant Bhushan and based on the investigation inputs received, the matter was found to be unsubstantiated. Having considered the contents of the letters and the comments thereon, the Committee was of the view that the allegations were not substantiated."

21. The file was sent to the Hon. President of India through MOS(PP) and then by the PMO on 5.6.2015 containing the agenda as well as the gist of the complaints which was received from the President's Secretariat on 8.6.2015 along with the Warrants of Appointment and order of oath. After obtaining their consent, the Warrants of Appointment were handed over personally to both Mr. K.V.Chowdary and Mr. T.M.Bhasin and the order on oath was also

sent to CVC on 8.6.2015. The decision taken by the Committee to appoint them was unanimous. Respondent Nos.2 and 3 were found to be eligible. Allegations were not found substantiated. The Committee had taken note of inputs received from various investigation and intelligence agencies and after satisfying themselves the allegations were found untenable and that they were the persons of impeccable integrity and satisfied the requirement of law, had recommended the appointments. There was no procedural irregularity or illegality. The present petition is in no manner public interest litigation. Complaints were baseless. There was no illegality or arbitrariness in their appointments.

22. In the counter affidavit filed by respondent No.2, Mr. K.V. Chowdary, it is contended that petition is based upon hearsay and letters written by third parties. The decision in P.J. Thomas case does not apply. In the case of P.J. Thomas incriminating material against him was not placed before the High Power Committee (HPC) and as such this Court had made interference. Mr. P.J. Thomas was accused of an offence under section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act (for short, "PC Act") and section 120B of Indian Penal Code, 1860 (for short, "IPC"). The Charge-sheet was filed before the Special Judge, Thiruvananthapuram. The definite role was attributed to him and there were several allegations made against him. A note was put up for holding a departmental inquiry for imposing a major penalty. The Central Vigilance Commission had sent the opinion to initiate major penalty proceedings against Mr. P.J. Thomas and another. The High Court of Kerala in its judgment had also alleged the role of Mr. P.J. Thomas in Palmolein case. The action of the State Government for initiating criminal case or pendency of the case or penalty before Special Judge, Thiruvananthapuram was never questioned or challenged by Mr. Thomas before any court of competent jurisdiction. Later, CVC had changed the opinion without any reason while giving vigilance clearance on 6.10.2008. Besides this, Court has made observations in one of its earlier judgments in *K. Karunakaran v. State of Kerala*³ about the role of accused in pending case before Special Judge, Thiruvananthapuram in Palmolein case.

23. It is contended that in the instant case against respondent No.2, there is no such incriminating material borne out from official records. The allegations are unfounded, made by busy-bodies with sinister motives. The High Power Committee along with reports of various authorities, Department of Revenue, CBI and Intelligence Bureau had examined the allegations which belie the correctness of the unfounded allegations. Mr. Anil Kumar Agrawal has annexed the ground against respondent No.2. The answering respondent in his capacity as Director General of Income tax (Inv) Delhi (DGIT) had granted approval in the year 2011 for initiating criminal prosecution under section 182 IPC against Mr. Agrawal. Further, the proceedings were instituted by the Institute of Chartered Accountants of India based on a complaint filed by an officer working under the answering respondent. Since then, Mr. Agrawal had started personally attacking, writing a volley of frivolous and vexatious complaints to many authorities in the Government etc. Complaints by other public institutions smack of venom against several political persons. The petition has not been filed with due diligence. Facts have not been verified by filing applications under the RTI Act or some other legal means. They have relied upon motivated complaint by Mr. Anil Agrawal who was seeking pound of flesh from answering respondent for aforesaid reasons. The

allegations are not supported by any evidence whatsoever. Petitioners have not explained the basis. Mr. Anil Agrawal had written hundreds of letters against answering respondent No.2 when he was being considered for the post of Member, CBDT, Chairman, CBDT and finally while being considered for the post of CVC. Mr. Agrawal had supplied false and motivated information to one of the members of the Common Cause and other political functionaries to initiate frivolous and vexatious proceedings. It amounts to a proxy war by Mr. Anil Agrawal through the petitioners and other public functionaries. One of the members of Common Cause had unleashed a slander campaign in the social media and press during the selection process with a view to prejudice the Selection Committee. Communications were released to media even while the selection process was in progress, it apparently intended to damage the prospects of selection of answering respondent No.2. Thus, it was made an issue private and personal to them. The allegations made fall short of the minimum standard of credibility. An effort has been made to somehow indict the answering respondent by placing reliance on a letter Annexure P3 in which false statements were made about the answering respondent's service record that three senior officers of CBDT made serious adverse remarks in his performance appraisal reports. Thus, the petitioners are guilty of malice in law by stating incorrect facts. For perjury, petitioners be prosecuted.

24. It is further contended by respondent No.2 in reply that while he was posted as Director General of Income tax (Investigation), Delhi from 1.11.2010 to 28.8.2012 and further from 29.8.2012 to 29.7.2014 he was posted as Member, CBDT. Thus, he was a Member (Inv) CBDT from 12.10.2012 to 31.10.2014. His duties included overall supervision of investigations under the direct tax laws and formulation of policies relating to direct taxes. He was appointed as Chairman, CBDT, Department of Revenue from 1.8.2014 to 31.10.2014. After his superannuation, he was appointed as Advisor to Department of Revenue on black money and functioned as such from 1.11.2014 to 4.6.2015.

25. It is further contended by respondent that he had investigated, supervised and monitored several cases of large business houses, politically sensitive persons, and bureaucrats holding very high offices, scams including 2G, commonwealth games and persons who were allocated coal blocks, chit fund scams, undisclosed foreign bank accounts including in HSBC, Geneva etc. Many cases investigated under his supervision finally led to detection and assessment of substantial undisclosed income and criminal prosecutions. During his tenure as Member (Inv) the number of cases in which prosecution proceedings were launched, went up from 149 to 669 and further offences compounded increased from 83 to 900. Respondent No.2 was adjudged one of the best Probationers during training and was awarded silver medal, was promoted out of turn from Deputy Commissioner of Income tax to Joint CIT on being graded as "outstanding" by UPSC. Very few may be 15 to 20 officers hold such record in the IRS at all times put together. His work, conduct, and integrity had always been rated at the highest level, ACRs. recorded by a wide range of officers over a period of years bear sufficient testimony. A verbatim extract of the remarks of the reporting and reviewing officers has been annexed as R2/1 to the counter affidavit.

26. It is further contended that his application dated 7.8.2014 was duly forwarded by the Department of Revenue along with his ACRs., integrity certificate and vigilance clearance

including a certificate that no disciplinary or criminal proceedings were either pending or contemplated against him. The Do PT has again called the applications vide communication dated 13.10.2014 for CVC. This advertisement/notification appeared in the newspapers and on the Government website. Application dated 21.10.2014 was again duly forwarded. The petition is based mainly on the representations made by Mr. Anil Kumar Agrawal who represented the grievances of one of his client M/s. Dharampal Satyapal Ltd., searched by the Investigation Wing (Unit II) on 21.1.2011 when he was serving as DGIT (Inv), Delhi. He had made allegations on 5.2.2011 and 18.2.2011 that his client was being harassed in his capacity as DGIT (Investigation). Answering respondent had quickly responded and brought harmony between the investigating officers and the taxpayer to facilitate further investigation. Ultimately I.O. made a reference to the CBI and other agencies. This did not suit the interest of Mr. Anil Agarwal. He had represented himself as whole-time Director of M/s. Dharamal Satyapal Ltd. It was found to be in violation of the provisions of Institute of Chartered Accountants of India Act and a complaint was filed by the I.O. Mr. Gaurav Dudeja, DDIT (Investigation) before the Institute of Chartered Accountants. The institute found Mr. Agrawal prima facie guilty of professional misconduct and initiated disciplinary proceedings as per Rule 9(1) of the Chartered Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 and decided to proceed under Chapter V of the Rules. The consequential judicial proceedings were still pending. Consequently, Mr. Agrawal in order to arm-twist the officers of the income-tax department and by way of intimidation had been consistently writing unfounded and baseless complaints against certain targeted officials of the department levelling serious allegations. In the case of M/s. Sanjay Parwal and other connected cases complaints were found to be baseless and unfounded and the outcome of arm-twisting tactics.

27. It is further contended that answering respondent No.2 had authorized the filing of a complaint under section 182 IPC against Mr. Anil Agarwal in his capacity as DGIT (Investigation) with the approval of CBDT. It was filed by the Deputy Director of Income Tax (Investigation), Headquarters, New Delhi, before ACMM, Tis Hazari Court, Delhi. Copy of complaint has been placed on record. It was mentioned in the complaint that false complaint had been filed against the officers to damage the reputation against the highly placed authorities. The court has taken cognizance of the complaint.ailable warrants were issued on 6.2.2012 as service of summons was intentionally evaded by Mr. Anil Agarwal. Various witnesses have been examined in the said case including answering respondent No.2. The case was still pending. Due to aforesaid reasons, Mr. Anil Kumar Agarwal had been levelling wild allegations against the answering respondent. Under Secretary has sought the comments of answering respondent as per O.M. dated 19.9.2014. The answering respondent has offered comments to the aforesaid effect. Same has been placed on record. Regarding the visits to Mr. Ranjit Sinha, Director, CBI, it is contended that respondent No.2 was heading the Investigation Division of CBDT and in that capacity, he had met the heads of other investigating agencies including the then Director, CBI. The answering respondent met the Director at his residence on a couple of occasions for some official work. He had also met him and his predecessor in their respective offices in North Block and in CBI Headquarters several times on official work. This can be verified from the registers of said offices. It is contended that he had never discussed the cases of Mr. Moin Qureshi or stock

guru with the then Director of CBI or during any such meeting. Petitioners have not substantiated by any record their allegations that some cases have been mutually and improperly settled. The allegations are based on conjectures and surmises.

28. That in the averments made and the facts mentioned in the letter {P-3} written by the member of Common Cause dated 20.5.2015 it was nowhere observed by this Court that the impact of the meetings has to be investigated by the CBI. The aforesaid averment is wrong and false and afterthought.

29. With respect to the allegations regarding Mr. Moin Qureshi, it is contended in the counter affidavit filed by respondent No.2 that he was a taxpayer in Delhi whose cases were investigated by the Delhi Directorate by conducting search on 15.2.2014. Respondent No.2 was a Member (Investigation), CBDT at that point of time. In that capacity, he monitored the cases across the country. The facts of the case and the findings have been submitted to the Government from time to time. All necessary actions including reference to foreign tax authorities, references under Mutual Legal Assistance to Hong Kong, sharing the information with the Enforcement Directorate, DRI, other relevant departments/agencies, Department of Financial Services and RBI regarding illegal activities of certain foreign banks, banks were taken in due time and with good results. The investigation apart from leading to detection of undisclosed incomes and assets had led to the filing of prosecution proceedings against certain persons. This Court in connection with coal mines allotment case i.e. W.P. (Civil) No.463 of 2012 directed filing of investigation report relating to involvement of certain persons and report was filed on 16.10.2014 in a sealed cover before this Court on 17.10.2014. This Court had passed an order on 8.12.2014 in which this Court has not expressed any dissatisfaction regarding the nature of work of the Investigation Division much less in respect of the work of the answering respondent. No such allegation was ever made in the Court. Thus, the allegations made in the petition are baseless.

30. With respect to allegations regarding stock guru it is contended in the counter affidavit of respondent No.2 that stock guru and the persons involved who were running a Ponzi scheme was investigated by the Deputy Director of Income Tax (Investigation) under an Additional Director of Investigation reporting to Director of Investigation (Investigation-II, Delhi) who in turn reported to the answering respondent as the then DGIT (Investigation) Delhi. A search conducted on 6.1.2011 led to the seizure of Rs.34.69 crores in cash. Mr. Anil Agarwal complained that the cash belonged to various depositors and it should not have been seized. Some depositors filed a separate case in a court in Delhi. The seized money was deposited in court as per the order that was passed. Certain allegations were made against the IO of stock guru namely Yogender Mittal, DDIT (Investigation). Name of the answering respondent did not figure anywhere in the FIR filed by the CBI nor there was any allegation of any wrong doing against him. No shortcoming was found in his actions. The CVC, Department of Revenue and CBDT had also got this issue enquired and apparently dismissed the allegations made against respondent No.2 as baseless. In "Let us Share" annual publication of CBDT many cases with which answering respondent was associated were reported year after year. During the relevant year also two cases were reported.

31. With respect to allegations of M/s. Flora and Fauna Housing Development Pvt. Ltd., it is contended in the counter affidavit filed by respondent No.2 that a search was conducted by the Criminal Investigation Division of the Income Tax Department on the Ponty Chadda Group on 1.2.2012. The said Division was being headed by Smt M. Sailoo, DGIT (I & CI) Delhi at that time. They prepared an Appraisal Report and sent it to the Assessing Officer in the Central Charge. While completing the assessment for the Assessment Year 2012-13 in March 2014, the Assessing Officer found a suggestion in the Appraisal Report that an addition of an amount of Rs.234 crores be made as unaccounted sales for the period from 01.09.2011 to 22.09.2011 as not acceptable. After a close scrutiny of this Appraisal Report, the Assessing Officer found that there is a discrepancy in treating this amount of Rs.234 crores as unaccounted sales in the said Appraisal Report. It was identified that it was a mistake that has been committed by the accountant in posting cumulative sales of various depots in the month of September 2011, instead of actual sale in the tally account maintained at head office, which had prima facie resulted in the said discrepancy. As per procedure, the Assessing Officer and Additional Commissioner in the Central Charge who were not convinced of the correctness of the suggestion of bringing the sum of Rs.234 crores to tax as unaccounted sales consulted the I&CI Division, who stated that the matter may be decided as per Law after taking into consideration the seized material, Appraisal Report, and Submissions of the assessee. On a consideration of the facts, the Assessing Officer came to a conclusion that there is no case for an addition and passed the Assessment Order under IT Act with the approval of the Additional Commissioner. In a meeting held on 28.03.2014, the DCIT (the Assessing Officer), the Additional Commissioner, Commissioner and the Chief Commissioner apprised the Member-investigation that they were of the view that no addition of Rs.234 crores was warranted as there was no evidence to suggest, much less to prove that unaccounted sales to that extent took place in the span of 21 days from 1.9.2011 to 22.9.2011. The answering respondent No.2 also agreed with the conclusion and signed the minutes of the meeting. There was no case for making an addition. He had not taken any such decision. The decision was taken by the Assessing Officer and the Additional Commissioner in whom the power is vested. They had brought it to the notice of the Commissioner, the Chief Commissioner and even the then Member probably due to the huge amount involved and to avoid complaints of this kind. Mr. Anil Kumar Agarwal has no connection with the said case. It is not brought on record that the background note submitted jointly by the DCIT, Additional CIT, CIT and CCIT and the record of the discussion in the meeting which clearly mentioned that the answering respondent had only concurred with the prior decision of the officers concerned of not making the addition on that issue. The record of the discussion in the meeting had also been placed on record and was signed by all present. In this Court false averment has been made in the petition. The allegations were probed by the competent authority and no irregularity whatsoever was found.

32. With respect to the allegations regarding the handling of accounts in the HSBC Bank it is pointed out in the counter affidavit by respondent No.2 that information regarding certain bank accounts held by persons of Indian origin in HSBC, Geneva was obtained by the Government (CBDT) from French Government relating to about 628 persons around June 2011. The CBDT passed-on the said information to the respective DGsIT (13 in numbers) situated across the country. About 148 names relating to Delhi were passed on to DGIT

(investigation) Delhi, which post was held by answering respondent at that time. Answering respondent got 66 searches conducted relating to these cases (as against a total 140 searches, in such cases across the country) (each case may relate to more than one name). Remaining cases were investigated either through Surveys u/s 133 A and/or Open Enquiries u/s 131 of the IT Act etc. The best results were achieved in the Delhi region. As per the procedure that is laid down, the Investigation Division prepared Appraisal Reports and sent them to the Assessing Officers concerned for further action such as assessment of income, recovery of tax, levy of penalty, initiation of prosecution proceedings in appropriate cases, etc.

33. It is further contended that the answering respondent No.2 was the only DGIT (investigation) who submitted proposals for the approval/ consideration of the CBDT for action (prosecution under the IT Act, and action under the Banking Companies Regulation Act, etc.) against the concerned foreign bank, its Indian affiliates and the persons concerned.

34. The answering respondent No.2 also held several video conferences periodically, that is to say, on 15.11.2012, 01.05.2013, 20.01.2014, 20.06.2014, etc. The answering respondent submitted that he was also instrumental in issuing several instructions and guidance notes for dealing with this category of cases which was a new and hitherto not-conceived kind of a work for the Investigating Officers and Assessing Officers. The answering respondent further submitted that hundreds of references were made through the Commissioners concerned, through the Foreign Tax Authorities under the provisions of Double Tax Avoidance Agreements (DTAA)/Tax Information Exchange Treaties as the information received through the French Government was incomplete in most cases. Only when it became clear that there was no possibility of getting further documents/information from the Swiss Tax Authorities due to certain limitations in the Tax Treaties, the Assessing Officers could go ahead with making assessments and further actions, including prosecution.

35. Efforts made by the answering respondent No.2 that a methodology called "Consent Waiver Mechanism" was devised due to which, with the consent of tax-payers, the copies of the Foreign Bank Accounts could be obtained from the foreign bank directly without going through the Swiss Tax authorities under the DTAA in about 80 cases, though they could not be obtained under DTAA. This is an innovative and successful action that has been evolved on account of the contribution of answering respondent.

36. The answering respondent No.2 further submitted that having regard to the seriousness of the matter, he had devised a diligent procedure for analyzing the database. He also actively collaborated with French Tax Authorities and obtained information in respect of 575 cases which were hitherto not available to the Indian Authorities. This analysis that he had adopted has resulted in the detection of these new accounts and this method of analysis was new even to the French Authorities, who initially shared the information with Indian Authorities.

37. The answering respondent No.2 submitted that the assessment proceedings were conducted by Assessing Officers situated across the country and it involved making references to foreign jurisdictions, local inquiries which took considerable time and ultimately all the assessments have been completed by the Assessing Officers concerned

within the statutory time allowed under the Income Tax Act. After that, the Assessing Officers started initiating prosecution proceedings in appropriate cases. Prosecution proceedings are to be initiated by Assessing Officers concerned across the country with necessary sanction from the Commissioners of Income Tax concerned (Sec. 279 of the Income Tax Act). The answering respondent further submitted that these are quasi-judicial functions to be exercised by the empowered officers and the CBDT only provides necessary guidance and monitors the progress. He submitted that he has exercised these functions diligently due to which as on 31-03-2015, about 121 prosecutions were launched in this category of cases and some more were in process. He further submitted that he had further followed up the proposals earlier submitted by him as DGIT (Investigation) Delhi and certain actions were initiated, wherever it was possible. Under these circumstances and the various efforts put in by him, including evolving of innovative methods of analysis; it is incorrect and absolutely inappropriate to allege that he had not initiated prosecution in these cases.

38. This Court constituted the Special Investigation Team (SIT) headed by Hon'ble Mr. Justice M.B. Shah (Retd.) and Hon'ble Mr. Justice Arijit Pasayat (Retd.). In this context he only begged to submit and bring to the notice of this Court the following observations of SIT in its 3rd Report:

“Shri K.V. Chowdary Advisor to CBDT and former Chairman, CBDT carried out detailed investigation and visited Paris in December 2014. During the said visit, he met the French authorities dealing with HSBC foreign accounts matters and new lines/modes of investigation have been pursued. As a part of such investigation, fresh references under Double Taxation Avoidance Convention (DTAC) were made by the CBDT to France in 605 cases, requesting for additional information. As a result of persistent follow-up, further information has been received in 575 cases in the last week of February 2015. Based upon new inputs (mostly in existing 624 cases), further investigation is in progress. It has been observed that some of the cases which were hitherto not actionable may become actionable as a result of such further investigations.”

39. The answering respondent No.2 is assisting SIT even after he had been appointed CVC. The Chairman of SIT on Black Money has issued a direction to the following effect :

“Shri K.V. Choudary, Ex-Chairman, CBDT and presently CVC shall assist the SIT as and when required and in such matters as the SIT would direct to provide necessary inputs.”

Proceedings dated 24.7.2015 has been placed on record.

40. With respect to the allegation of failure to make any headway in 2G scam investigation, it was submitted that answering respondent No.2 worked as DGIT (Investigation) Delhi from 1.11.2010 to August 2012. During this period the case of Unitech Ltd., whose associate/sister concern was granted telecom licence and few connected cases of other telecom companies being investigation in other charges were investigated in the Delhi Directorate by DIT (Inv)-I

who functioned under him. All necessary investigations were carried out and findings were communicated to the Assessing Officers who took appropriate actions. However other cases of telecom companies were within the jurisdictions of DGsIT (Inv), Mumbai, Chennai, Bengaluru etc. for the purpose of making presentations and meetings on behalf of the Income-Tax Department, DGIT (Investigation), Delhi was appointed as the Nodal authority. They had coordinated with other DGsIT and other investigating agencies including CBI, ED etc. and had also made several presentations on the action taken by the Income Tax Department before the Joint Parliamentary Committee.

41. This Court has never expressed dissatisfaction or inadequacy regarding the functioning.

42. With respect to the allegation regarding Radia Tapes when answering respondent No.2 had joined as DGIT (Investigations) on 1.11.2010, the surveillance of Ms. Nira Radia was over. Actionable issues were identified and necessary action was taken either by the Delhi Directorate or was communicated to other Directorates for further action. The information was duly shared with the assessing officers, and other law enforcement authorities such as CBI, ED etc. The matter was before this Court. The representations were submitted from time to time. None of the authorities found any shortcomings or inaction on his part on this count. No such allegation was made before this Court against him by the counsel appearing in 2G scam case.

43. In the counter affidavit filed by Mr. T.M. Bhasin, respondent No.3, in the reply contends that the petition is based upon suppression and false averments have been made. As such petition suffers from *suppressio veri*, *suggestio falsi*. Respondent No.3 has an excellent academic record and vast experience and expertise in the field of banking. He is (i) an M.Sc. Gold Medalist, (ii) LLB, MBA Finance from Delhi University, (iii) Topper in the Delhi University in the flagship one-year programme viz. 'Criminology and Forensic Science'; and (iv) CAIIB. In addition to the above qualifications, he had a wide and varied experience in Banking where he joined as a Probationary Officer in 1978 and in course of time got due promotions and reached the level of General Manager in 2003. He has got about 8 years of experience as a Whole Time Director in two Public Sector Banks, comprising of Executive Director (ED) from November 2007 to March 2010 in UBI and as Chairman and Managing Director of the Indian Bank for the period 2010-2015. It is pointed out that at the time of his present selection he was the longest serving Senior-most Chairman & Managing Director in Public Sector Banks. He had also headed the Indian Banks' Association as a Chairman and was also Chairman of the Indian Institute of Banking Personnel Selection and was also President of the Indian Institute of Banking Finance (IIBF) since 2014. He had also experience in the Insurance Sector having worked for nearly five years as a Director on the Board of United India Insurance Company. That during his 37 years long Banking career he has an impeccable record of integrity, sincerity, honesty, and dedication towards duty. Under his stewardship as CMD of Indian Bank, the Bank had won various National Awards like the following:

- National Award for excellence in Lending to Micro Enterprises for FY 2012 on 4th April 2013 from Hon'ble President of India.

- National Award to Banks FY 2013 - First Prize for Excellence in lending to Micro Enterprises on 01.03.2014 from Hon'ble Prime Minister of India.
- Indira Gandhi Rajbhasha Puraskar for 2012-2013 for South Zone TOLIC from Hon'ble President of India.
- First price and Best Bank Award for extending credit to SHGs on 24.02.2014 from Hon'ble Chief Minister of Tamil Nadu consecutively for five years.

44. It was further stated that initially he was given five years tenure as Chairman & Managing Director of the Indian Bank from 1.4.2010 to 31.3.2015. Being satisfied with the performance of the Bank during the said period, his tenure was further extended by Appointment Committee of the Cabinet vide Government notification dated 27.3.2015 from 1.4.2015 up to the date of his superannuation i.e. 31.5.2016. At each stage of new appointment/assignment above, all necessary clearances had been obtained by DFS from the CVC, CBI, DoPT and other concerned departments and agencies. Respondent No.3 had applied for the post of Vigilance Commissioner pursuant to a notification dated 13.10.2014.

45. With respect to the allegation of tampering with APAR of Mr. Malay Mukherjee, respondent No.3 received a letter from Ms. Sumita Dawara, Director of Financial Services dated 4.11.2010 to send details of Annual Performance Appraisal Reports (APAR) of eligible GMs for selection as Executive Director by 15.11.2010 on an urgent basis. The respondent states that the relevant APAR of Mr. Malay Mukherjee, the then GM, Indian Bank for the period 2009-10, duly appraised by Mr. V.Ram Gopal (Executive Director) was received on November 15, 2010, and he, as reviewing authority, concurred with Average Rating Appraisal done by Mr. V. Ram Gopal and it was sent to the DFS in compliance with the letter dated 4.11.2010. The respondent states that Mr. Malay Mukherjee claimed to have submitted his APAR for the year 2009-2010 on 29.07.2010 and by which time Mr. Sundarrajan, the former CMD had demitted office on 31.3.2010. As per Rule 5(7) of All India Services (Performance Appraisal Reports) Rules 2007, a retired official can review the performance of the appraisee only within one month of the date of his retirement. As previous CMD had demitted office as early as 31.03.2010, the respondent who was the incumbent CMD had rightly exercised his Reviewing Authority powers, which was the extant practice too. There is nothing on record of the Bank to substantiate the version of Mr. Malay Mukherjee, about the submission of the APAR for 2009-2010 on 29.07.2010. Even going by averments of Mr. Malay Mukherjee, the APAR was dated 07.07.2010, whereas Mr. Sundarrajan the earlier CMD had demitted office over three months earlier. The Vigilance Department of the Indian Bank had during its internal inquiry found out that the statement of Mr. Malay Mukherjee claiming to have sent the APAR by courier and the proof produced thereof was unsubstantiated.

46. Nothing on record was found to substantiate the version of Mr. Malay Mukherjee about the submission of APAR for the period 2009-2010 on 29.7.2010. According to Mr. Mukherjee APAR was dated 7.7.2010 whereas Mr. Sundarrajan had demitted the office more

than three months before. The Vigilance Department of Indian Bank had during its internal inquiry found that the claim of Mr. Mukherjee that APAR was sent by courier on 29.7.2010 was not substantiated. Said courier was sent from Zonal Office to Bhopal. The petitioners have relied upon the notings of Shri R. Srikumar, Vigilance Commissioner, (VC(S)) whereas majority opinion was not for criminal investigation. Majority opined that the CVC did not ask the CBI to investigate the matter, that the CVC may ask for certain documents from the CVO/DFS so as to ascertain as to the APAR and then to reach a final conclusion. The CVC had agreed with the VC(G) in this regard. That there was disagreement with VC(G) on two occasions i.e. on 15.10.2012 and 30.11.2012 and it is the majority view that prevails.

47. Pursuant to the majority opinion steps of follow up were taken whereafter the CVO and DFS have opined that there is no conclusive evidence for initiating even departmental inquiry as that may not stand the scrutiny of law as is apparent from OMs. dated 27.8.2012 and 24.12.2012.

48. Respondent No.3 had received OM dated 6.9.2013. For the first time, he was provided an opportunity to submit his version on the various allegations made by Mr. Malay Mukherjee. Answering respondent submitted the detailed 32 pages reply with 130 pages Annexures and it was the normal practice to write APAR once the previous CMD had retired. Thus, he had not committed any illegality or irregularity in doing so.

49. Considering the reply submitted by answering respondent No.3 on 26.9.2013, the Department of Financial Services sent a Memorandum dated 10.3.2014 as R-III to CVC, clarifying the whole matter and appraisal of Mr. Mukherjee's APAR and holding that the deponent had not violated any guideline and no disciplinary action was warranted.

50. A detailed version of Department of Financial Services summarised in the file notings of CVC dated 31.3.2014, 28.4.2014 and 6.5.2014, thus, gave finality/closure to the whole issue, has been accepted by the respondents in the counter affidavit. Same is extracted hereunder:

"The Extract of the official file notings dated 28.04.2014, on the observations of the Advisor by Vigilance Commissioner, Shri Rajiv and that of Central Vigilance Commissioner is given hereunder :

VC (R) noted "matter may be closed. It is more of an administrative nature and not exactly a vigilance issue"

51. The CVC had also concurred with the VC and made the following noting:

"I am in agreement with VC (R) that writing of APAR and its review is essentially an administrative matter. However, in this case, it had acquired vigilance overtones due to allegations of tampering of APAR. DFS, after the inquiry, has come to the conclusion that the evidence is not sufficient to prove the most crucial charge of tampering with the APAR of Shri Malay Mukherjee. I am inclined to agree with DFS in this respect. DFS has however pointed out that Shri Bhasin wrote the APAR of

2009-10, without having overseen the work of Mr. Malay Mukerjee. Shri Bhasin, in his defense, has cited past precedents. DFS has also conceded the need to have uniform guidelines in Banks to avoid such confusions and inconsistencies. However, DFS has considered it unethical on the part of Shri Bhasin to have written 'Average' at two places. For this Shri Bhasin may be cautioned and the case closed as proposed by VC (R)"

52. No punishment was imposed. Only an observation was made to be cautious. The same was advisory in nature and not a penalty. Thus after receipt of reply matter stood concluded. The allegations of tampering and forging were found baseless and closed. The factum of closure has been suppressed by the petitioner. The clearance of respondent No.3 had been made by the CVC also and CVC has given the clearance in which it was opined that there was nothing adverse against the answering respondent.

53. Mr. Prashant Bhushan, learned counsel appearing for the petitioner submitted that the appointment of respondent Nos.2 and 3 as per mandate of this Court in Centre for PIL (supra), respondent Nos.2 and 3 could not be termed as persons of impeccable integrity, consequently they could not be said to be fit to hold the office of CVC and VC in the absence of Lokpal is required to discharge important functions and to ensure that functionaries versed with integrity in the interest of the nation considering the higher responsibilities. Respondent Nos. 2 and 3 could not be said to be suitable for the posts in question. The appointment of Mr. K.V. Chowdary, CVC, respondent No.2 has been assailed. It was urged by learned counsel that respondent No.2 had connections with Mr. Ranjit Sinha, former CBI Director. There was quid pro quo between them since respondent No.2 was given clean chit in stock guru scam and in turn income tax department in its appraisal report of Mr. Qureshi gave clean chit to Mr. Ranjit Sinha. Since respondent No.2 was involved in stock guru scam and gave favourable report to Mr. M.Qureshi the credentials of respondent No.2 could not be said to be proper and trustworthy. Respondent No.2 was also involved in M/s. Flora and Fauna Housing Development Pvt. Ltd. and in waiving off Rs.234 crores and had influenced the decision making by the assessing officer in illegal manner. It was also urged that respondent No.2 did not actively investigate the foreign accounts in HSBC Bank, Geneva. There was failure of respondent No.2 to make any headway into the scam investigation as no action was taken with respect to Radia Tapes. All these facts have not been examined by the Union of India before making appointment of CVC as such same is liable to be quashed.

54. With respect to the appointment of VC, Mr. T.M.Bhasin learned counsel has urged that he was indicted in a detailed inquiry by the CVC in 2013 for forging and tampering with the appraisal report of Mr. Malay Mukherjee, General Manager, Indian Bank. Even his criminal prosecution was suggested by one of the Vigilance Commissioners since he had fabricated the APAR of Mr. Malay Mukherjee, the appointment of respondent No. 3 as Vigilance Commissioner was null and void since there was finding of moral turpitude by the CVC against Mr. T.M.Bhasin which made him unfit to hold the office of Vigilance Commissioner.

55. It was also urged by learned counsel that in order to ensure a transparent procedure for an appointment it is necessary the persons who have been empanelled should be disclosed to the public so that it can send information in respect of such persons to the Government.

56. Mr. K.K. Venugopal, learned Attorney General for India, contended that there was absolutely nothing against Mr. K.V.Chowdary. He has produced the record which this Court had directed and contended that on the basis of representations filed by Mr. Anil Kumar Agrawal and others, were looked into, reports were called from concerned departments, viz., Department of Revenue/MoF/IB/CBI etc. Clearances were obtained and it was found that there was no merit in the aforesaid objections which were raised in the representations and the Committee has taken a unanimous decision, with respect to suitability vigilance clearance has been obtained. It is not open within parameters of judicial review as laid down in Centre for PIL (supra) to make interference in the appointments made unanimously by the High Power Committee on due consideration of entire material. It was pointed out that the due procedure has been adopted for appointments of CVC and VC and has produced the various files for perusal of this Court. He has taken the Court in extensive details with respect to the procedure adopted with the help of record. Various other files as to matter in question as prayed by the Common Cause Society have also been produced.

57. Per contra, Mr. C.S. Vaidyanathan learned senior counsel contended on behalf of respondent No.2 that the allegations made in the petition are based upon the incorrect statement and on an imaginary basis and are not supported by any material, they are based upon assumptions made by the petitioners with respect to the integrity of respondent No.2. There was absolutely nothing against respondent No.2. The requisite clearances had been obtained from various departments and there was nothing against in the entire service record of Mr. K.V. Chowdary. His record was excellent with rich experience and has been found fit by the High Power Committee in an objective manner after duly considering the various aforesaid objections which were raised in the representations filed by Mr. Anil Kumar Agarwal. He had the personal axe to grind against respondent No.2. As he was prosecuted as per the approval granted by respondent No.2 and disciplinary proceedings had also been initiated by the Institute of Chartered Accountants, on that basis respondent No.2 had deposed against him in a criminal case pending in the court at Delhi. Thus, baseless and reckless allegations were repeatedly made by him at every juncture whenever respondent No.2 was selected for any high office. These allegations were never found to be proved and were mischievously raised with the objective to malign him due to personal vengeance. The aspersions cast have been refuted and it was asserted that no case for interference in the judicial review was made out.

58. Mr. P.S. Patwalia, learned senior counsel on behalf of Mr.T.M.Bhasin, VC, contended that firstly no representation was filed against Mr.T.M.Bhasin by any of the incumbents still the High Powered Committee was apprised of the said aspect relating to APAR of Mr. Malay Mukherjee and it was found that the allegation of fabrication of APAR was not substantiated. The conclusion was reached that it was not a case even to hold a departmental inquiry and it was held and simply a caution was issued. It was also urged that there was no fabrication of the APAR of Mr.Malay Mukherjee and he is said to have sent an APAR for 2009-2010

which was signed by the retired CMD Mr. Sundarrajan on 7.7.2010. He claimed that it was dispatched by him on 29.7.2010. Said courier with the said number was dispatched to Bhopal and not to the concerned office. No such APAR was received by the office. Even otherwise erstwhile CMD had demitted the office on 31.3.2010 and as per Rule 5(7) of the Rules of 2007, a retired official can review the performance of the appraisee only within one month from the date of his retirement. Since the CMD had demitted the office on 31.3.2010 the power could not have been exercised by him on 7.7.2010. No such APAR had been received. Such power was rightly exercised by respondent No.3 to write APAR in the capacity of reviewing officer to make a remark in the APAR. For perjury, the petitioners be prosecuted. Further communication dated 4.11.2010 was required to be sent. It was not a case of fabrication or forging the APAR at all as suggested by the petitioners. When the various departments have not found anything against answering respondent and after respondent No. 3 had filed a representation matter was dropped. It could not be said that there was anything to blame the outstanding record and high integrity of respondent No.3.

59. It need not be re-emphasized that the Central Vigilance Commission is one of the integrity institutions. It was set up in 1964. After the decision rendered by this Court in Vineet Narain (supra), the 2003 Act has been enacted and its function is to improve the vigilance administration of the country and to have anti-corruption measures. Pursuant to recommendations made by the Reviewing Committee, the report made by it in December 1997 statutory status was suggested. This Court in Vineet Narain (supra) had observed that the given status as recommended by the independent Reviewing Committee, in the year 1999 an Ordinance was issued which was replaced by the 2003 Act. Section 4 lays down constitution of the Committee. The Prime Minister as Chairperson, the Home Minister as a member and Leader of Opposition in the House of People is also a member of the said Committee. In case there is no Leader of Opposition, the leader of opposition to include the leader of the single largest group in opposition and no appointment made shall be invalid, may be by reason of any vacancy in the Committee. The appointment has to be made by the President as provided in section 5. The oath has to be administered. Section 6 deals with removal of Commissioner and Vigilance Commissioner, contains safeguards. On a reference being made by the President on the ground of proved misbehavior or incapacity to this Court. On inquiry, it was reported that CVC or VC be removed on said grounds. The other exigencies with respect to removal contained in sub-section (3) to section 6 on being declared insolvent or convicted of an offence, engages during his term of office in any paid employment outside the duties of his office or in the opinion of President is unfit by reason of infirmity of mind or body, has acquired such financial or other interest as is likely to affect his functioning as the CVC or VC.

60. Just to exercise superintendence over the functioning of the Delhi Special Police Establishment with respect to offences under the P.C. Act, 1988 or an offence with which a public servant specified in sub-section (2) under the Cr.P.C. may be charged with at the trial, and may issue directions to the CBI, review the progress of investigations conducted by CBI, review the progress of applications pending with the competent authority for sanction of prosecution under the P.C. Act, exercise superintendence over vigilance of various Ministries etc. It can enquire into an investigation to be made as the member of All India Services etc.

as provided in section 8. The Vigilance Commission is an institution. Thus, the institution's competency is to be ensured by the Government as well as its integrity. Consequently, the personal integrity of an individual also becomes relevant as it has correlation with the institution's integrity.

IN RE: APPOINTMENT OF CVC:

61. In the backdrop of aforesaid first, we consider the case of Mr.K.V.Chowdary appointed as CVC. The process of appointment that has been followed reflects that the procedure followed was by issuing advertisement in newspapers. Wide publicity was given, various advertisements throughout India were issued. 132 applications were received. The Committee headed by Cabinet Secretary shortlisted 12 names of CVC and 10 names for V.C. However, details of all 131 applicants which included work experience, ACR grading wherever applicable, vigilance clearance, age criteria, experience in the matter relating to vigilance, policy making and administration were placed before the Committee - HPC. The HPC in its meeting dated 23.5.2015 shortlisted six candidates for the post of CVC and 2 candidates for the post of Vigilance Commissioner and called for inputs on the representations. The second meeting of the Committee took place on 1.6.2015. The agenda placed before the Committee contained all the details including vigilance details of shortlisted applicants. The details of Mr. K.V.Chowdary were placed in the file and the details of Mr. T.M.Bhasin were placed.

62. There were three representations/complaints against Mr. K.V.Chowdary. The Prime Minister's Office had asked for inputs on the allegations so made as to ascertain the correctness of facts contained in the representations.

63. So far as Mr. T.M.Bhasin is concerned no such complaint was received. However, during vigilance inquiry which was conducted by respondent No.1, mentioned as to the complaint with regard to Mr. Malay Mukherjee and said fact was mentioned under the heading of vigilance clearance. It was mentioned that there was nothing adverse against Mr. Bhasin on that account. The Department of Financial Services had while giving its report went into the entire allegations with regard to Mr. Malay Mukherjee as against Mr. T.M.Bhasin and cleared him. The CVC also has given clearance to Mr. T.M.Bhasin on 2.2.2015.

64. With respect to Mr. K.V.Chowdary complaints were placed before the Committee along with the facts and true position regarding the allegations. Note that was placed before the Committee, mentioned all the allegations made in three complaints and imputation of the factual position received with regard to the same from various agencies like IB, CBI, Department of Revenue, Ministry of Finance which was summoned by the PMO so as to place the same before the HPC. The Committee considered all the allegations against all shortlisted candidates including Mr. K.V.Chowdary and Mr. T.M.Bhasin and unanimously decided to appoint them as Chief Vigilance Commissioner and Vigilance Commissioner respectively.

65. The Union of India has submitted following files for our perusal:

(A) Minutes of the meeting of the Selection Committee held on 23.5.2015 and 1.6.2015;

(B) Meeting notice and agenda for the first meeting of HPC held on 23.5.2015;

(C) Meeting notice and agenda for the Selection Committee meeting held on 1.6.2015;

(D) Folder G containing IB reports;

(E) Folder (I) vigilance clearance from the Department of Financial Services and CVC;

(F) Representations and letters submitted against the appointment of respondent Nos.2 and 3;

(G) Complaints and inputs on the same placed before the Committee;

(H) Annexure E containing the record of CVC, DoPT, DFS in the case of respondent No.3 regarding his role in APAR of Mr. Malay Mukherjee;

(I) Income tax record regarding assessment proceedings of M/s. Flora and Fauna Housing and Land Development Pvt. Ltd. which was associated with Mr. Ponty Chadha;

(J) CBI report in Stock Guru scam involving income tax officers.

(K) Record pertaining to income tax assessment of M/s. Flora and Fauna Housing and Land Development for the assessment year 2012-13 containing following folders/details of which are furnished in the tabular form:

Sl. No.	Record	Page	Brief Description of the record submitted
1	Folder - 1	1-11	Copy of the Income tax return filed by M/S Flora and Fauna Housing & Land Development (P) Ltd for Assessment Year 2012-13
2	Folder - 2	1-124	Correspondence of the AO with his superiors as also Directorate of I&CI mainly on the alleged issue of Rs.234 crore [sales figures as entered in the tally seized accounts and the sales figures as per the sales ledgers of the various depos]
3	Folder - 3	1-39	Background note for the meeting of the officers of

			the central charge, New Delhi with the Member(Investigation) on 28.3.2014 to apprtise him of the decision taken by the AO for not making an addition on the alleged issue of Rs. 234 crore. It also contains minutes of the said meeting.
4	Folder – 4	1-786	Notices issued by the AO to the assessee, replies filed by the assessee, Notices/Summons issued to other persons, statement of persons recorded during assessment proceedings, draft assessment order submitted by the AO to his Additional Commisstoner for statutory approval, approval given by the Additional Commisstoner, the Assessment Order passed by the AO, demand notice issued etc.
5	Folder – 5	1-43	Correspondence of AO with officers of the C&AG regarding audit and special audit of the assessment of M/S Flora and Fauna Housing & Land Development (P) Ltd for Assessment Year 2012-13.
6	Folder – 6	1-5	Copies of assessment order and office note (original in Folder-4 above)
7	Folder – 7	1-12	Explanatory brief of the records given by CBDT: Contained in the secret communication of CBDT to Department of Personnel & Training vide F.No.286/73/2015-IT (Inv.II) dated 13.9.2017

IN RE: APPOINTMENT OF RESPONDENT NO.2

66. Even before the appointment of respondent No.2 some representations were filed not to appoint him as CVC. The main thrust of the arguments raised by the petitioners' counsel was that the appointment violated the institutional integrity and respondent No.2 could not be said to be a person of impeccable integrity. For this various reasons have been assigned without meaning to give clean- chit. We examine them whether the prima facie case is made out by the petitioners to make interference. We propose to discuss them in seriatim: Respondent No.2 met Mr. Ranjit Sinha the then Director, CBI who was directed by this Court vide order dated 21.11.2015 in C.A. No.1060 of 2010. This Court had directed Mr. Ranjit Sinha not to interfere in investigation prosecutions carried out by CBI in 2G scam case and to recuse himself from 2G scam case. This Court had also observed against Mr. Sinha that the meetings with accused in coal scam were inappropriate. These allegations are against Mr. Ranjit Sinha. However, what is submitted against respondent No.2 is that respondent No.2 had met Mr. Ranjit Sinha, CBI Director on 29.12.2013 and 20.4.2014 for 15 minutes on earlier occasions and 8 minutes on a later date. When the meetings were held, respondent No.2 was probing the interception dealings of Hawala dealer Mr. Moin Qureshi. Mr. Ranjit Sinha, Director, CBI, was investigating Stock Guru scam where senior income tax officers were involved in which Mr. Sinha was investigating the role of respondent No.2. Certain senior income tax officers had taken a bribe to favour two scamsters of Stock Guru and had misappropriated about Rs.40 crores. Said officers were working under respondent No.2. Thus, it was not appropriate for respondent No.2 to meet Mr. Ranjit Sinha. Income tax department gave a clean chit to Mr. Ranjit Sinha in respect of Mr. Moin Qureshi and CBI gave a clean chit to respondent No.2. Thus, respondent No.2 and Mr. Ranjit Sinha helped each other.

67. In the counter affidavit filed by respondent No.2 it has been stated that since he was heading the Investigation Division of CBDT and in that capacity, he had met the heads of other investigating agencies on several occasions including the Joint Director, CBI, Mr. Ranjit Sinha. Answering respondent met the Director on a couple of occasions at the residence and in the office of several officers. At no point of time, the cases of Mr. Moin Qureshi or Stock Guru were ever discussed with the then Director of CBI Mr. Ranjit Sinha.

68. With respect to the arguments this Court on 14.5.2015 has observed as under:

“36. As mentioned above, it is not necessary for us to examine whether the investigation into the case of the Dardas was in any manner influenced by Mr. Sinha at any point of time. What is of importance is that as justice must not only be done but it must also appear to have been done, similarly, investigations must not only be fair but must appear to have been conducted in a fair manner. The fact that Mr. Sinha met some of the accused persons without the investigating officer or the investigating team being present disturbs us with regard to the fairness of the investigations. This is all the more so if we keep in mind the fact that in the 2G scam investigations, this Court had concluded in its order dated 20th November, 2014¹ that Mr. Ranjit Sinha should not interfere in the investigation and prosecution of the case relating to the 2G spectrum allocation and to rescue himself from the case. That a SIT was not ordered in the 2G spectrum case is not relevant. A view was taken that Mr. Sinha should be directed to not interfere in the investigations in that case and that, coupled with his meeting accused persons in the Coal Block Allocation case without the investigating officer being present, is enough to persuade us that some further inquiry is necessary to ensure that the investigations have been fair in the coal block allocation cases where Mr. Sinha has had one or more meetings with one or more accused persons...

46. With regard to IA No.13 of 2014, since we have held that it was completely inappropriate for Mr. Ranjit Sinha to have met persons accused in the Coal Block Allocation case without the investigating officer being present or without the investigating team being present, it is necessary to look into the question whether any one or more such meetings of Mr. Sinha with accused persons without the investigating officer have had any impact on the investigations and subsequent charge sheets or closure reports filed by the CBI. We require assistance in this matter, particularly for determining the methodology for conducting such an inquiry. For rendering assistance to us in this regard, notice be issued to the Central Vigilance Commission returnable on 6th July 2015.”

69. No observations were made by this Court against respondent No.2 Mr. K.V. Chowdary and there was no allegation has been made against Mr. K.V. Chowdary in this Court by any person including the same counsel for the petitioner. The petitioners have come up with the case that there was meeting on two occasions, whereas respondent No.2 has disclosed that in the office there were several meetings. It was usual to meet for Heads of various investigating agencies in connection with official work. There being no other material to substantiate aforesaid aspersions it is simpliciter an assumption that the meetings took place

with an evil design. The highest officers might have discussed the other issues. There is no other supporting material to substantiate the aforesaid aspersions. How the help was extended, in what manner and in Stock Guru scam there was no allegation against respondent No.2 in any manner whatsoever. Thus, it is far-fetched to urge that the aforesaid meetings were to extend help to each other.

70. With respect to Stock Guru, the investigation was made not by respondent No.2 but by Deputy Director of Income-tax (Investigation) and under Additional Director of Investigation, reporting to Director of Investigation, Investigation-II, Delhi, who in turn reported to the respondent, the then Additional D.G. (IG) Investigation, Delhi. Such conduct on 6.2.2012 led to a seizure of Rs.34.96 crores in cash. Initially, there was a complaint by Mr. Anil Kumar Agrawal who had nothing to do with this case that the cash belonged to various depositors and it should not have been seized. On a case filed the amount was deposited in court as per the order passed by the court. Appraisal report was prepared by the I.O. and sent to assessing officer who initiated assessment proceedings. However, on 3.6.2013 the CBI started an investigation into the conduct of the then I.O. of Stock Guru, that is Mr. Yogender Mittal, who was DIG - Investigation. The name of respondent No.2 did not figure in the First Information Report filed by the CBI. No wrongdoing, no shortcoming was found by any authority in the action of respondent No.2 when 13 allegations were made by Mr. Anil Kumar Agrawal against respondent No.2. The CVC, Department of Revenue and Department of CBDT got the issues enquired and allegations were found to be baseless.

71. With respect to the allegations made by Mr. Anil Kumar Agrawal, it was clear that since he was criminally prosecuted under section 182 IPC and disciplinary proceedings, had been initiated against him by the Institute of Chartered Accountants of India at the instance of respondent No.2 and respondent No.2 had deposed against him in the criminal case in the court and once upon time Mr. Anil Kumar Agrawal had appreciated the gesture of respondent No.2 it was clearly an afterthought for him to level the allegations which were without any supporting material and had never been substantiated by any material. In the newspaper report dated 15.4.2014 name of respondent No.2 was not mentioned, no supervisory failure was attributed. Respondent No.2 was not subjected to an investigation by the CBI. Thus, the aforesaid cast of aspersions upon respondent No.2 by the petitioners has no basis. Same is not substantiated by any material and is simply stated to be rejected.

72. File No.245/32/2015-AVD.II has been produced which contains the answers of CBI with respect to various queries made which were on the basis of the complaint. It has been mentioned that the CBI has investigated the relevant case during the tenure of Mr. Ranjit Sinha in the Stock Guru scam on the basis of a complaint received from E.O.W., Delhi Police, relating to demand and acceptance of illegal gratification from Mr. Ulhas Prabhakar of M/s. Stock Guru by Mr. Yogender Mittal (IRS-2006), ADIT to help him in the income-tax case. The investigation did not reveal the involvement of Mr. K.V. Chowdary. It was also noted that nothing came to the notice of CBI against Mr. K.V. Chowdary.

73. Another aspersion on the integrity cast is relating to a search conducted by criminal investigation division of income-tax on Ponty Chadha group M/s. Flora and Fauna Housing

Development Pvt. Ltd. on 1.2.2012. It was urged by learned counsel for the petitioners that respondent No.2 abused his position to under-assess the income of the said company by an amount of Rs.234 crores. He issued a direction to the assessing officer to dispose of the case in a particular manner which could not have been done in view of section 119 of the Income Tax Act and judgment of this Court. The CBDT had no jurisdiction to instruct the assessing officer to dispose of a case in a particular manner.

74. On behalf of respondent No.2, it was contended that search was conducted by criminal investigation division headed by Smt. M. Saillo, DGIT, Delhi. It was not conducted by respondent No.2. They prepared an appraisal report and sent it to the assessing officer in the Central charge. While completing the assessment for the relevant assessment year. The assessing officer on a suggestion in the appraisal report that addition of an amount of Rs.234 crores be made as the accounted sale from 1.9.2011 to 22.9.2011 as not acceptable since appraisal report was prepared by a team of aforesaid DGsIT. Since discrepancy was found in the appraisal report it was identified that it was a mistake committed by the accountant in posting cumulative sales of various depots in the month of September 2011 in actual sales.

75. As the matter was to be decided as per law the assessing officer came to the conclusion that there was no case for addition and passed an order under the Income Tax Act with the approval of the Additional Commissioner. In a meeting held on 22.3.2014, DCIT (Assessing Officer), the Additional Commissioner and Chief Commissioner apprised respondent No.2, Member (Investigation) that they were of the view that no addition of Rs.234 crores was warranted as there was no evidence to suggest much less to approve that an accounted sale to that extent took place in the span of 21 days from 1.9.2011 to 22.9.2011. Respondent No.2 agreed with the conclusion of the aforesaid officers. Respondent No.2 had not taken any decision. The decision was taken by the Assessing Officer and the Additional Commissioner in whom the power vested. They thought it fit to bring it to the notice of the Commissioner, the Chief Commissioner and even the member involved and to avoid/protect themselves from the mischievous complaints and since the appraisal report was sent by DGIT. Mr. Anil Agarwal had circulated this note for the purpose of making false allegations against respondent No.2 and the note that was submitted by DCIT, Additional CIT, CIT and CCIT and the record of the discussion in the meeting had been suppressed which indicated that respondent No.2 had concurred with the aforesaid officials. The Record of Discussion in Minutes of the meeting with Member (Inv) on 28.3.2014 by officers of CCIT, Central Region, New Delhi, contained the following:

“4. The Hon’ble Member considered the material placed along with background note and printout of accounts found in seized material and agreed with the view taken by field officers. He agreed with the decision of not making addition on the issue mentioned in Appraisal Report.

5. The Hon’ble Member also permitted that the discussion and deliberations in the meeting may be recorded for reference purpose. Hence this Record of discussion in the meeting is prepared which is signed by all present.”

76. The background note R2/20 and the detailed minutes of the meeting R2/21 have been placed on record. Besides we have seen the record pertaining to income-tax assessment of M/s. Flora and Fauna Housing and Land Development Pvt. Ltd. contained in 7 folders. Folder 2 contains the correspondence of the officer with the superiors also Directorate of I & CI, mainly on the alleged issue of Rs.234 crores. Folder 3 contains background note for the meeting of the officers on 28.3.2014 and to apprise him of the decision taken by Assessing Officer for not making the addition of alleged issue of Rs.234 crores. Folder 4 contains notices issued by the Assessing Officer to the assessee, replies etc. Approved assessment order submitted by A.O. to Additional Commissioner for his approval. Approval was given by the Additional Commissioner. Copies of the assessment orders and explanatory briefs of record given by CBDT. In Folder 7 the aforesaid stand is fully substantiated by the document that has been placed on record.

77. It is apparent that the assessing officer has taken a decision for not making addition and he wanted confirmation and the senior officers considered the matter in detail and then background note was prepared and record of discussion has been placed on record and that was agreed to by respondent No.2. He has not issued a direction as suggested on behalf of the petitioners rather approval was sought by the assessing officer as the stake was high and appraisal report was prepared by the earlier DGIT level and she had considered it appropriate to seek the approval so as to allay the apprehension of compliance in future. Thus the facts make it clear that no impropriety has been committed by respondent No.2 in the aforesaid factual background and the background on record and he has not directed the assessing officer to proceed in a particular manner but rather various higher authorities had agreed with the assessing officer and thereafter had put up the matter for discussion with the respondent who had also agreed with them. In the facts of the case, we find that allegation raised with respect to favour being meted out to M/s. Flora and Fauna Housing & Land Development (P) Ltd. at the instance of respondent No.2 has been considered by HSBC and not at all substantiated from the material on record. As a matter of fact, full facts have not been placed on record either by Mr. Anil Agrawal or otherwise to make the position clear. It is apparent that Mr. Anil Agrawal was making reckless allegations and was guilty of suppressio veri and suggestio falsi. It is apparent that no direction had been issued by respondent No.2 for not making the addition. The said allegation levelled by Mr. Anil Agrawal had been looked into by the concerned authorities and no irregularity whatsoever was found.

78. The next aspersion cast upon respondent No.2 is with respect to the failure of respondent No.2 to take appropriate action against the foreign bank account holders in HSBC Bank, Geneva for almost 3 years. It was urged that no prompt action was taken by respondent No.2. Since the formation of SIT the income tax department had not filed even a single prosecution against HSBC account holders. It was contended by learned counsel on behalf of respondent No.2 that the information regarding bank accounts held by the persons of Indian origin in HSBC, Geneva was obtained by the Government (CBDT) from French Government relating to approximately 628 persons around June 2011. Out of them, 148 names relating to Delhi were passed on to DGIT, Investigation, Delhi, the post held by respondent No.2. 66 searches were conducted in Delhi under respondent No.2 whereas total 140 searches were undertaken across the country. The best results were achieved by the Delhi Region. The Investigation

Division prepared appraisal reports and sent them to their assessing officers for further action such as assessment of income, recovery of tax, levy of penalty, initiation of prosecution proceedings in appropriate cases. It was also pointed out that respondent No.2 was the only DGIT (Investigation) who submitted the proposal for the prosecution against the concerned foreign banks and its Indian affiliates, and persons concerned. It was also contended that yet respondent No.2 had closely monitored the investigation and functions of other ITOs., followed up the cases by holding weekly meetings, guidance, suggestions, interaction. Video conferencing were also held. The information received from the French Government was incomplete in most of the cases. When it became clear that there was no possibility of getting further information the assessing officer could go ahead with making assessment including the prosecution. Consent waiver mechanism was devised by the respondent which was an innovative action. He had obtained information in respect of 575 cases which were hitherto not available to Indian authorities. The judicial functions were to be exercised by the entire officers and the CBDT only provides the necessary guidance and monitors the progress. About 121 prosecutions were launched by 31.3.2015 and some more were in progress when the answering respondent left. The SIT had made the following observations with respect to the action taken by respondent No.2:

“This court through the Special Investigation Team (SIT) headed by Hon’ble Justice Shri M.B. Shah (Retd.) and Hon’ble Justice Shri Arijit Prasayat (Retd.). In this context, I only beg to submit and bring to the notice of this Honourable Court the following observations of the Hon’ble SIT in its 3rd Report :

"Shri K.V. Choudary Advisor to CBDT and Former Chairman, CBDT carried out detailed investigation and visited Paris in December 2014. During the said visit, he met the French authorities dealing with HSBC foreign accounts matters and new lines/modes of investigation have been pursued. As a part of such investigation, fresh references under Double Taxation Avoidance Convention (DTAC) were made by the CBDT to France in 605 cases, requesting for additional information. As a result of persistent follow-up, further information has been received in 575 cases in the last week of February 2015. Based upon new inputs (mostly in existing 624 cases), further investigation is in progress. It has been observed that some of the cases which were hitherto not actionable may become actionable as a result of such further investigations.”

79. It was also pointed out that vide letter dated 24.7.2015 R-2/22, he was requested to assist the SIT even after taking charge of the post of CVC.

80. Considering the aforesaid submissions raised on behalf of the petitioner that during the tenure of Mr. K.V.Chowdary nothing was substantially done with respect to HSBC Bank is not at all substantiated. Rather his functioning has been appreciated by the SIT as mentioned above and his assistance has been sought even by the Chief Vigilance Commissioner.

81. Next submission raised by learned counsel appearing for the petitioner is with respect to the failure to make any headway, as he failed to take action in the income-tax cases, in the

2G scam. Unlike the CBI or Enforcement Directorate filed several charge-sheets. The averment in this regard in the petition is in the passing form and is vague. Apart from that, no specific instance has been given in which case there was a failure on the part of respondent No.2. That apart respondent No.2 had made it clear that during the tenure from 1.11.2010 to August 2012 he had taken up the case of Unitech Ltd. whose associates and their sister concern had been granted licences and few other cases of telecom company were investigated and few connected cases of telecom companies were also under investigation for other charges. All necessary investigation was carried out and aforesaid findings were communicated in due time to the Assessing Officer who took appropriate action. Cases of other telecom companies under the jurisdiction of DGIT, Bombay, Chennai, Bengaluru etc. Respondent No.2 as a nodal agency coordinated and made several representations as to the action taken by the income- tax department before a Joint Parliamentary Committee. It could not be pointed out in which particular matter respondent No.2 was found lacking. Thus the submission raised on behalf of the petitioners is too tenuous to be accepted. It was never pointed out to this Court that there was laxity on the part of respondent No.2 when the aforesaid matter C.A. No.10660/2010 was listed in this Court.

82. The last aspersion cast is with respect to Radia Tapes, the inaction of respondent No.2 of not taking action against the concerned incumbents. Details of action which were required and could have been taken have not been given in the petition thus no specific averment has been made in this regard by the petitioners. When we consider the reply it is apparent that respondent No.2 was DGIT Investigation and he joined on 1.11.2010 by which time surveillance of Ms. Nira Radia was over and some intercepts relating to such surveillance were in public domain due to leakage probably in May-June, 2010. When he had taken over as DGIT (Investigation) in November 2010 actionable issues were identified and necessary action was taken either by the Delhi Directorate or was communicated to the Directorates for further action. The information was duly shared with the Assessing Officers and other law enforcing agencies such as CBI, ED etc. The matter was before this Court in Public Interest Litigation (PIL). None of the authorities ever found any shortcoming or inaction on the part of respondent No.2 on this count. It was also not urged before the Court by aforesaid PIL of 2010 whenever it was listed.

83. Apart from that, it has also been pointed out by respondent No.2 that in the petition with respect to APAR of respondent No.2 false averments have been made, that adverse remarks were made by three senior officers of CBDT. The allegation has been termed to be baseless and unfounded and misleading. In the 36 years of service, not even a single remark has been made in the APAR. All the remarks had been based on record as in the form of compendium R-2/1. There is no adverse remark in them. Thus the petition suffers from wrong averments also. Thus, it is apparent that against respondent No.2 unsubstantiated allegations have been made.

84. This Court in Centre for PIL (supra) held while examining the appointment of Mr. P.J. Thomas. The CVC had observed with respect to the parameters of judicial review in such matters of appointment thus:

”59. It was held by this Court in R.K. Jain case (1993) 4 SCC 119 that judicial review is concerned with whether the incumbent possessed requisite qualification for appointment and the manner in which the appointment came to be made or the procedure adopted was fair, just and reasonable. When a candidate was found qualified and eligible and is accordingly appointed by the executive to hold an office as a Member or Vice President or President of a Tribunal, in judicial review the Court cannot sit over the choice of the selection. It is for the executive to select the personnel as per law or procedure. Shri Harish Chandra was the Senior Vice President at the relevant time. The question of comparative merit which was the key contention of the Petitioner could not be gone into in a PIL; that the writ petition was not a writ of quo warranto and in the circumstances, the writ petition came to be dismissed.

60. It was held in R.K. Jain case (supra) that even assuming for the sake of arguments that the allegations made by the Petitioner were factually accurate, still, this Court cannot sit in judgment over the choice of the person made by the Central Government for appointment as a President of CEGAT so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. It was held that this Court cannot interfere with the appointment of Shri Harish Chandra as the President of CEGAT on the ground that his track record was poor or because of adverse reports on which account his appointment as a High Court Judge had not materialized.

61. In Hari Bansh Lal v. Sahodar Prasad Mahto (2010) 9 SCC 655 the appointment of Shri Hari Bansh Lal as Chairman, Jharkhand State Electricity Board stood challenged on the ground that the board had been constituted in an arbitrary manner; that Shri Hari Bansh Lal was a person of doubtful integrity; that he was appointed as a Chairman without following the rules and procedure and in the circumstances the appointment stood challenged. On the question of maintainability, the Division Bench of this Court held that a writ of quo warranto lies only when the appointment is contrary to a statutory provision.

62. It was further held in Hari Bansh Lal case that "suitability" of a candidate for appointment to a post is to be judged by the appointing authority and not by the court unless the appointment is contrary to the statutory rules/provisions. It is important to note that this Court went into the merits of the case and came to the conclusion that there was no adequate material to doubt the integrity of Shri Hari Bansh Lal who was appointed as the Chairperson of Jharkhand State Electricity Board. This Court further observed that in the writ petition there was no averment saying that the appointment was contrary to statutory provisions.

63. As stated above, we need to keep in mind the difference between judicial review and merit review. As stated above, in this case, the judicial determination is confined to the integrity of the decision-making process undertaken by the HPC in terms of the proviso to Section 4(1) of the 2003 Act. If one carefully examines the judgment of this Court in Ashok Kumar Yadav's case (supra) the facts indicate that the High Court had sat in appeal over the personal integrity of the Chairman and Members of the

Haryana Public Service Commission in support of the collateral attack on the selections made by the State Public Service Commission. In that case, the High Court had failed to keep in mind the difference between judicial and merit review. Further, this Court found that the appointments of the Chairperson and Members of Haryana Public Service Commission was in accordance with the provisions of the Constitution. In that case, there was no issue as to the legality of the decision-making process. On the contrary the last sentence of para 9 supports our above reasoning when it says that it is always open to the Court to set aside the decision (selection) of the Haryana Public Service Commission if such decision is vitiated by the influence of extraneous considerations or if such selection is made in breach of the statute or the rules.

64. Even in R.K. Jain's case (supra), this Court observed vide para 73 that judicial review is concerned with whether the incumbent possessed qualifications for the appointment and the manner in which the appointment came to be made or whether procedure adopted was fair, just and reasonable. We reiterate that Government is not accountable to the courts for the choice made but Government is accountable to the courts in respect of the lawfulness/legality of its decisions when impugned under the judicial review jurisdiction. We do not wish to multiply the authorities on this point.”

85. That judicial determination is confined to the integrity of the decision making process by the HPC. That the difference between judicial and merit review, the legality of decision-making process can also be looked into. If the decision is influenced by extraneous considerations or selection is made in breach of the statute or rules, it can be set aside. The Government is not accountable to the courts for the choice made but the Government is accountable to the courts in respect of the lawfulness/legality of its decisions.

86. In the case of Mr. P.J.Thomas, CVC, it was a binding criminal proceeding under the P.C. Act and between the period of 2001 and 2004 the DoPT had recommended the disciplinary proceeding against Mr. P.J.Thomas in respect of Palmolein case. The pendency of the case before the Special Judge under the P.C. The act was not taken into consideration as well as the observations made by this Court in *K.Karunakaran v. State of Kerala & Anr^d*. in which an FIR against Mr. Karunakaran and others including that of Mr. Thomas was held not to be the result of mala fides or actuated by extraneous considerations. This Court observed that the menace of corruption could not be permitted to be hidden under the carpet of legal technicalities and the probe conducted has to be determined in accordance with law. In the aforesaid background, the recommendation made by the HPC was held to be non-est in law.

87. Three representations/complaints were received against Mr. K.V.Chowdary. The PMO had asked for details of the allegations so as to ascertain the facts contained in the representations filed against Mr.Chowdary. Complaints of Mr.Chowdary were placed before the Committee. Factual inputs on opinion were received with respect to the various aspects in representation from various agencies like CBI, Information Bureau, Department of Revenue, Ministry of Finance and were placed before the HPC which considered all the allegations against all shortlisted candidates. No complaint was received against Mr. T.M.Bhasin.

Requisite clearances were given by the IB with respect to Mr. K.V.Chowdary and Mr. T.M.Bhasin. With respect to the allegations, separate inputs were obtained and placed before the Committee. There was nothing adverse found.

On following issues the comments were called :

POINT NO.(I)

88. Mr. Chowdary's name figured in the list of visitors who visited his official residence. The inputs on the aforesaid aspects were called from the IB and CBI. No adverse comment was made. Apart from that, it was pointed out that the matter was sub judice in this Court regarding Mr. Ranjit Sinha. However as already discussed, no insinuation could be cast upon Mr. Chowdary due to aforesaid visits.

POINT NO. (II)

89. With respect to Stock Guru scam, the CBI reported that investigation did not reveal the involvement of Mr. Chowdary.

POINT NO. (III)

90. With regard to issue No.(iii), investigation of hawala dealer Mr. Moin Qureshi, the comments of Department of Revenue, Ministry of Finance were obtained as well as inputs from IB and CBI. The IB has given input that Mr. Moin Qureshi's link with Mr. Chowdary could not be confirmed. The Department of Revenue, Ministry of Finance opined that the allegations made against Mr. Chowdary were found absolutely misplaced. The petition of Mr. Qureshi filed before the Settlement Commission was opposed by the Income Tax Department. As a result, the same was dismissed. Even before completion of the assessment, the prosecution under section 277 of IT Act and sections 181, 177, 193, 196, 120B read with section 23 were launched against Mr. Qureshi.

POINT NO. (IV)

91. With respect to Radia tapes, the Department of Revenue, Ministry of Finance opined that the opinion of the authorities has found no fault with Mr. Chowdary. Allegations against him were factually incorrect and baseless. IB has opined that the allegations could not be established in the course of the discreet inquiry. The CBI also found nothing adverse against Mr. Chowdary in 2G scam cases or Radia tapes consequent upon the order dated 21.2.2013 of this Court.

POINT NO.(V)

92. The allegation that the In-charge of the 2G scam investigation Mr. Chowdary failed to make any headway in the case, it was opined by the Department of Revenue, Ministry of Finance that none of the authorities i.e. Supreme Court, Central Vigilance Commission, Joint

Parliamentary Committee, Public Accounts Committee before whom the DGIT presented periodical reports, found any shortcoming or deficiencies. Mr. Chowdary, who was working as DGIT (Inv.), took necessary steps to have 2G cases falling under his jurisdiction investigated expeditiously and properly. The charges levelled in the complaint were found baseless and incorrect. IB input was that black money cases came to a fast track after the constitution of SIT. The CBI did not report anything against Mr. Chowdary.

POINT NO. (VI)

93. As to the allegation of HSBC account holders investigation, it was pointed out that Mr. Chowdary had monitored investigation in 445 cases of HSBC foreign accounts and the best results were achieved in Delhi cases as compared to other Directorates. Mr. Chowdary pointed out illegal banking activities in HSBC, Geneva, and proposed prosecution of HSBC Geneva. He closely monitored and followed up these cases. The allegation that no progress was made was found wrong. When SIT was formed in May-June, 2014 by that time investigation in most of the cases was already at the advanced stage. IB had given the input in this regard that though much progress was not made earlier but after the constitution of SIT, it was on fast track.

POINT NO. (VII)

94. With respect to adverse remarks in the performance appraisal reports by three senior officers of CBDT, the Department of Revenue has forwarded a summary of annual CRs. from November 1978 to February 2014 which was placed on record and that nothing adverse was found. IB also made the input that the allegation could not be corroborated in the course of discreet inquiries.

POINT NO. (VIII)

95. Mr. Chowdary wrongfully reduced the undeclared wealth of M/s. Flora and Fauna Housing Development Pvt. Ltd., a company of Mr. Ponty Chadha by over Rs.200 crores. The allegations were found to be absolutely baseless by the Department of Revenue, Ministry of Finance. IB had also placed its inputs regarding the allegation and adoption of the procedure. It was, however, opined that he enjoyed good personal and professional image. Nothing adverse against his character or integrity has come to notice. The allegation about M/s. Flora and Fauna Housing Development Pvt. Ltd., was mentioned but no adverse comment was made.

POINT NO. (IX)

96. As per the complaint received from Anil Kumar Agrawal of forming a nexus between the income tax officers and trying to conceal the undisclosed income of relative of a Minister, Department of Revenue opined that it was a motivated complaint and the complainant did not substantiate it despite three reminders hence it was closed.

POINT NO.X

97. As to the complaint by Anil Kumar Agrawal regarding corruption charges in connection with income tax raids on M/s. Raj Mahal Jewellers and protection to Mr. Gaurav Dudeja, DDIT (Inv.), the complaint was closed and it was not found substantiated.

POINT NO.XI

98. Regarding complaint by Mr. H.R.V. Rao forwarded by one of the Members of Parliament against Mr. Chowdary, parked crores in amassing properties in his families/relatives names, the Department of Revenue, Ministry of Finance opined that several verification letters were sent to the complainant and concerned Member of Parliament no response was received from them. Thus, the complaint was ultimately closed as it was not substantiated.

POINT NO.XII

99. The complaint was received from CVC with respect to interception of Rs.12.30 crores during U.P. elections and the differences between Member (Investigation) and Member (L&C). The Department of Revenue, Ministry of Finance opined that the allegations were examined thoroughly. The allegations made were baseless. There was no merit or substance in the complaint. The matter was referred to CVC for closure with the approval of Finance Minister. CVC had advised closure of the complaint on 14.7.2014.

POINT NO. XIII

100. As to the complaint from Advocate, R.K. Bansal to CVC vide office memorandum dated 7.10.2013 inter alia referring to Stock Guru scam and senior officers of ITO, Investigation Wing, regarding misappropriation of Rs.42-44 crores and that Mr. Chowdary did not share the information with the investigating agencies.

101. The comments by Department of Revenue Ministry of Finance disclosed that the CBI had lodged the FIR in the matter, the name of Mr. Chowdary did not appear in the FIR nor any communication received from the CBI. The findings were referred to the CVC with the recommendation to close the complaint against Mr. Chowdary with the approval of Finance Minister. CVC advised closure of the complaint. IB also opined there was no formal investigation against Mr. Chowdary.

102. In reference to complaint about Mr. Anil Kumar Agrawal regarding administrative misuse and involving income tax raids conducted at M/s. Iryan Coal during April 2012, the Department of Revenue pointed out that there was no infirmity in the search and seizure operations.

103. The allegation of nexus with the office of Investigation Wing was found baseless. The matter was referred to CVC. CVC had advised closure of the complaint.

104. Thus, each and every aspect and information had been placed before the High Power Committee when the decision was taken. Thus, the integrity of the decision-making process has not impinged in this case in any manner whatsoever. Neither decision was taken to appoint respondent No.2 as CVC can be said to be suffering from any illegality. The decision cannot be said to be influenced by extraneous considerations and the choice made of Mr. Chowdary cannot be said to be such which is amenable for interference by the court in judicial review.

IN RE: APPOINTMENT OF RESPONDENT NO.3 :

105. With respect to the appointment of respondent No.3, Mr. T.M.Bhasin as Vigilance Commissioner, learned counsel appearing for the petitioner has urged that since his criminal prosecution was ordered, ultimately it was not fructified. However, on the administrative side, he was severely indicted for fabricating/forging the APAR of Mr. Malay Mukherjee, General Manager and was cautioned. Thus, in view of the order passed in the serious background, it could not be said that person who was accused of fabricating/forging APAR was a person of impeccable integrity fit to hold the office of Vigilance Commissioner of an integrity institution of this country.

106. The backdrop facts of the aforesaid order of caution unfold that Mr. Malay Mukherjee was General Manager of Indian Bank. His APAR for 2009-2010 was required to be written. He had not served under respondent No.3 Mr.T.M.Bhasin. Mr.T.M.Bhasin was not reporting officer but was reviewing authority in the capacity of CMD of Indian Bank. The predecessor CMD had admittedly retired on 31.3.2010 and as provided in Rule 7 of All India Services Performance and Appraisal Report, Rules, 2007, retired official could review the performance of appraisee within one month from the date of his retirement. Mr. Sundarrajan, former CMD is said to have signed APAR on 7.7.2010 after more than three months which he could not have done. Be that as it may. Even if he did it unauthorizedly or irregularly such APAR was not found on an inquiry conducted by the Vigilance Department of the office. The courier sent by Mr. Malay Mukherjee from zonal office was sent to Bhopal related to some other matter and was not received by the Head Office. Even if we ignore the aforesaid aspect question arises whether Mr. T.M.Bhasin has fabricated or forged the APAR of Mr. Malay Mukharjee from excellent to average. Whether it was mentioned to be outstanding by Mr.Sundarrajan.

107. Letter dated 4.11.2011 was issued by the Department of Financial Services to send the APAR of eligible General Managers for selection as Executive Director by 15.11.2010 on urgent basis. It was received on 10.11.2010 by respondent No.3. The relevant APAR of Mr. Malay Mukherji duly apprised by Mr. Ram Gopal, Executive Director was received on 15.11.2010. Respondent No.3 as reviewing authority concurred with the average grading done by Mr. V.Ram Gopal, Executive Director. It was sent to the F.S. in compliance.

108. Since Mr. Malay Mukherjee claimed that he had sent APAR dated 7.7.2010 for the period 2009-10 signed by Mr. Sundarrajan, former CMD on 29.7.2010 and the matter

travelled to the Central Vigilance Commission. One of the members out of the three opined that the CBI may be asked for a criminal investigation into the matter. However, the majority view was not to investigate the matter on criminal side but only the Chief Vigilance Commissioner may call for certain documents/information from the Chief Vigilance Officer/DFS to ascertain and come to the final conclusion. The view of CVC and VC prevailed being the majority view as per section 9(4) of the Act of 2003. Thus, nothing could be made out by the petitioners on the basis of the observations of VC(S). Later on, follow up was taken in view of the majority view. The Chief Vigilance Commissioner and the Department of Financial Services stated that there was no conclusive evidence against Mr. Ram Gopal and respondent No.3 even to hold a regular departmental inquiry.

109. Later on, memorandum dated 6.9.2013 was received from the DFS seeking his clarification on the subject matter. Respondent No.3 submitted a written explanation with annexures running in 162 pages and pointed out that in the past there were 14 such cases when succeeding CMDs. had submitted APAR when reviewing APAR when officers have not worked under him. Thus no action against him was warranted. He had not violated any guidelines. The notings of Chief Vigilance Commissioner dated 31.3.2014, 28.4.2014 and 6.5.2014 are extracted hereunder:

“The Extract of the official file notings dated 28.04.2014, on the observations of the Advisor by Vigilance Commissioner, Shri Rajiv and that of Central Vigilance Commissioner is given hereunder :

VC (R) noted “matter may be closed. It is more of an administrative nature and not exactly a vigilance issue”

110. The CVC had also concurred with the VC and made the following notings:

”I am in agreement with VC (R) that writing of APAR and its review is essentially an administrative matter. However, in this case, it had acquired vigilance overtones due to allegations of tampering of APAR. DFS, after the inquiry, has come to the conclusion that the evidence is not sufficient to prove the most crucial charge of tampering with the APAR of Shri Malay Mukherjee. I am inclined to agree with DFS in this respect. DFS has however pointed out that Shri Bhasin wrote the APAR of 2009-10, without having overseen the work of Mr. Malay Mukerjee. Shri Bhasin, in his defense, has cited past precedents. DFS has also conceded the need to have uniform guidelines in Banks to avoid such confusions and inconsistencies. However, DFS has considered it unethical on the part of Shri Bhasin to have written ‘Average’ at two places. For this Shri Bhasin may be cautioned and the case closed as proposed by VC (R).”

111. After receipt of the reply, no case was found against him of tampering or forging. The matter was taken up at the highest level. He was cautioned which did not amount to any penalty. No inquiry was held after the reply was sent by respondent No.3. It was opined by the DFS in its letter dated 10.3.2014, Annexure R-3 that average is not sufficient. In para 9 it

was mentioned that average is not sufficient to prove the charge of tampering. At the most, it may be unethical to write average in view of the average grading. However, the marks received 53 out of 100 correspond to average grading. However, Mr. Bhasin has not overseen the work of Mr. Malay Mukherjee. However, Mr. Ram Gopal had overseen the work of Mr. Malay Mukherjee. So having written the APAR by Respondent No.3, he has not violated any guidelines. The Department has taken up the issue and the same was issued in due course. As such the departmental action against respondent No.3 or against Mr. Ram Gopal was not warranted. Same has been accepted. It is clear that the Chief Vigilance Commissioner had closed the matter on 8.5.2014 and advised DFS to issue caution letter to respondent No.3. In the aforesaid circumstances, it cannot be said that there was any punishment, major or minor, inflicted upon respondent No.3. He tried to justify his action that though he did not oversee the functioning, he was justified in writing APAR but so far as fabrication and forgery are concerned, no finding has been recorded against respondent No.3 with respect to the APAR for 2009-2010 by any formal order on the administrative side. Thus, his integrity is not going to be affected in the aforesaid factual matrix. When the APAR purportedly written by Mr. Sundarrajan was not available and its claimed dispatch on 29.7.2010 was not relating to the APAR. Be that as it may. There is no finding recorded against respondent No.3 either by the Chief Vigilance Commissioner or the DFS in any manner whatsoever so as to impinge adversely upon his integrity, necessary for such an institution of Vigilance Commission. Apart from that, no representation was filed against respondent No.3. However, this aspect was dealt with and was mentioned in the report which was submitted before the HPC. Thus, there was nothing against the integrity of respondent No.3 so as to hold that the recommendation with respect to him was illegal and void and entire material was placed before the HPC.

112. Thus, in our considered opinion the recommendation made of Mr. Bhasin cannot be said to be suffering from procedural infirmity in decision making. The integrity of the procedure has been maintained. Though there was no complaint the aforesaid aspect which has been urged on behalf of the petitioners was looked into by the High Power Committee on the basis of inputs made. Thus, nothing adverse was found in the final conclusion in the matter of writing of APAR of Mr. Malay Mukherjee. Thus, we find that no case is made out with respect to the appointment of respondent No.3 as Vigilance Commissioner to make interference in judicial parameters.

113. We have not interfered with the appointments. The complaints against Mr. Chowdary were made and they were looked into. It is not for this Court to decide on the choice. We are nowadays in the scenario that such complaints cannot be taken on face value. Even against very honest persons, allegations can be made. Those days have gone when filing of the complaints was taken as serious aspersions on integrity. Ideally, there should not be any serious complaint as the filing of same raises eyebrows. As in the instant matter, complaints have been looked into and we decline to interfere.

114. Resultantly, we find no grounds to quash the appointment of Respondent No.2 as CVC and respondent No.3 as VC. Writ Petitions are disposed of accordingly.

Judgment Referred.

¹(1998) 1 SCC 0226

²(2011) 4 SCC 0001

³(2000) 3 SCC 0761