

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3918-3919 OF 2019

(arising out of S.L.P. (C) Nos. 32344-32345/2018)

THE STATE OF TAMIL NADU & ORS. . . . APPELLANTS

Vs.

ELEPHANT G. RAJENDRAN & ORS. ETC. . . . RESPONDENTS

J U D G M E N T

ASHOK BHUSHAN, J.

Leave granted.

2. The State of Tamil Nadu alongwith its functionaries have filed these appeals against the common judgment dated 30.11.2018 passed by the High Court of Madras in Writ Petition Nos. 20392 and 20963 of 2018 filed by the respondents as PIL (Public Interest Litigation).

3. Tamil Nadu is a State, which is known for its majestic temples, its rich culture and heritage. Idols consecrated in its various temples have their

own significance, rich heritage and some of the idols dates back to 1500 to 2000 years back. There have been several instances for theft of precious idols and artefacts in the State of Tamil Nadu, which alarmed the State Government. The State Government vide its G.O.Ms. No. 2098, Home(Pol-IV) Department dated 07.10.1983 formed an Idol Wing of Crime Investigation Department (CID). The temples in Tamil Nadu are administered under the enactment namely, Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "Act, 1959"). Hindu Religious and Charitable Endowments Department (hereinafter referred to as "HR & CE Department") of the State controls and administers various temples in the State. The HR & CE Department of the State keeps a direct control and management of the temples, its properties, idols and artefacts etc.

4. One Mr.A.G. Ponn Manickavel, the respondent No.2 herein, who shall hereinafter be referred to as "respondent No.2" was appointed as Deputy Inspector General of Police, Idol Wing, Chennai on 11.02.2012, which was part of Economic Offences Wing of the Tamil

Nadu Police. The role of the wing is basically for efficient investigation, detection and follow up of the Idol theft cases and follow the Court cases concerning them. Respondent No.2 was continued in the Idol Services Wing since then.

5. The two individuals namely, Mr. R. Venkataraman and Mr. Elephant G. Rajendran, the respondent No.1 herein, filed petitions before the High Court of Madras under Section 482 Cr.P.C. being Crl.O.P. No. 8960 of 2017 and Crl.O.P. No. 12060 of 2017. In Crl.O.P. No.8960 of 2017, it was prayed for transferring the investigation regarding theft of 06 idols from the HR & CE Department to the Idol Wing of the Tamil Nadu Police and in Crl.O.P. No.12060 of 2017, the prayer was made to transfer an FIR pertaining to an Idol theft from the Idol Theft Wing, CID, Chennai to the Crime Branch, CID, Chennai.

6. The case filed by the petitioner in Crl.O.P. No. 8960 of 2017 was with regard to Sri Pasupatheeswarar Temple in Thanjavur District, which was built during the Chola Reign about 1500 to 2000 years ago, which

according to petitioner houses several ancient idols of temples. Allegation was made that 06 of such idols were missing belonging to a temple with regard to which complaints were made to police officers and officials of HR & CE Department. Despite several complaints to police officers and officials of HR & CE Department, no FIR has been lodged and no action has been taken to punish the erring officials of the HR & CE Department. It was further pleaded that officials of HR & CE Department are not appropriate authority to investigate the offence of theft, hence appropriate direction was sought for.

7. Mr. Elephant G. Rajendran, who is respondent No.1 in this appeal, had filed CrI.O.P. No. 12060 of 2017 making allegation that a police official came into possession of six Idols during the course of their investigation had sold the Idols for Rs.6 Crores. Despite the fact that FIR had been lodged against the accused, they have been promoted and no further action was taken. Further allegation was that investigation by a subordinate officer of the same wing cannot be handled effectively. Allegations were

also made that Idols worth several crores of rupees were sold by the trustees in collusion with the HR & CE authorities.

8. Madras High Court disposed of both the Crl.O.P. petitions by its judgment dated 21.07.2017. the High Court during the hearing had summoned the Inspector General of Idol Wing, who at that time was second respondent. Inspector General of Idol Wing appeared before the Court and brought to the notice of the Court, various difficulties and shortcomings faced by the Idol Wing due to which steps for detection of Idol thefts and bringing the culprits before law is being hampered. During the course of hearing on 30.06.2017, it was brought before the knowledge of Madras High Court that respondent No.2, who was working as Inspector General of Police, Idol Wing has been transferred. Court observed that officer, the respondent No.2 has been supervising the cases and has efficiently traced and recovered several Idols worth several crores. Court further observed that it is not that the succeeding officer is less efficient, but considering that Respondent No.2 and his team have extensively travelled throughout the country and

are aware of the modus operandi of the culprits, for the sake of continuity, speedy completion of the investigation and completion of the pending cases, respondent No.2 must continue despite the work assigned presently. The Madras High Court on 21.07.2017 issued 20 directions to the State of Tamil Nadu, out of which first 04 directions are as follows:-

- "(i) The Chief Secretary of the State of Tamil Nadu must issue appropriate orders within a week for the creation of a special camp at Tiruchirappalli headed by Mr. A.G. Ponn Manickavel, IPS, Inspector General of Police with other members of Idol wing, who associated him earlier for the completion of trial in the pending cases in the State and needless to say that necessary infrastructure, staff and transportation, vehicle, fuel etc. from time to time are to be provided. The said officer can place his representation immediately intimating required assistance and the team members required by him to the Chief Secretary and on such representation, the same shall be provided forthwith.
- (ii) The cases pending on the file of various courts in the State of Tamil Nadu prosecuted by the Idol wing are hereby transferred to the file of the learned Additional Chief Judicial Magistrate, Kumbakonam for effective and speedy disposal of the cases, on day to day basis.

(iii) The Inspector General of Police Mr. A.G. Ponn Manickavel, IPS and all the officers of the cases connected with Idol wing, CID are directed to continue to investigate and follow up all the cases under investigation, pending trial, till the disposal by the learned Additional Chief Judicial Magistrate, Kumbakonam.

(iv) The team as now ordered by this Court headed by the Inspector General of Police Mr. A.G. Ponn Manickavel, IPS, shall continue to follow up those cases in addition to their present and future assignments, wherever they are posted.

.....”

9. The Director General of Police aggrieved by the order dated 21.07.2017 passed by the Madras High Court filed a SLP (Crl.) Nos. 6139-6140 of 2017, which was disposed of by this Court by its order dated 01.09.2017 in following manner:-

“Having heard Mr. Mukul Rohatgi, learned Senior Counsel for the petitioners and Mr. J. Sai Deepak Iyer, learned counsel for the respondents and upon perusal of the record, we consider it appropriate to delete the findings pertaining to the mala fide nature of the transfer of Inspector General of Police Mr. A.G. Ponn Manickavel. We order accordingly.

Nonetheless, the order regarding the transfer of Inspector General of Police Mr. A.G. Ponn Manickavel, shall remain intact.

With the aforesaid observations, the special leave petitions stand disposed of.

As a sequel to the above, pending interlocutory applications, if any, stand disposed of."

10. This Court did not interfere with the directions of Madras High Court dated 21.07.2017 directing the respondent No.2 to continue to head the Idol Wing of the CID. The High Court vide its order dated 21.07.2017 had not disposed of the matter finally rather it postponed the matter for reporting compliance. It appears that before the High Court, it was brought to the notice that State has not complied with various directions issued on 21.07.2017 and there are obstacles created in carrying out various functions of the Idol Wing. It is further to be noticed that several FIRs were registered leading to arrest of several culprits including some officers of HR & CE Department. In order dated 21.07.2017, in CrI.O.P. No. 8690 of 2017 and CrI.O.P. No. 12060 of 2017, High Court made certain observations about not

providing proper infrastructure to the Court appointed idol Wing.

11. On 31.07.2018, Commissioner, HR & CE Department wrote a letter to Director General of Police, Chennai. In the D.O. letter, Commissioner stated that Idol Wing of the Police is harassing the officials of HR & CE Department and they are being threatened with filing of the FIRs. Reference to certain complaints made by officers of HR & CE Department brought to the notice of the Commissioner were also narrated. The Commissioner requested the State to take necessary action to ensure a fair and confidential investigation and bring the culprits to book, without damaging the reputation of honest officials and the Department. Commissioner also requested that early charge sheets be filed and prosecution be undertaken to enable disposal of the cases, early apprehension of criminals and restoration of the Idols to the respective temples.

12. On the said letter, Additional Director General of Police on same date, i.e., on 31.07.2018 wrote to

the Director General of Police mentioning that during investigation of cases, several senior officers and other staff belonging to HR & CE Department were also arrested. The Additional Director of Police recommended that all cases under investigation by the special team constituted for Idol theft cases and all such future cases may be transferred to the Central Bureau of investigation. Director General of Police on 01.08.2018 wrote to Additional Chief Secretary to the Government concurring with the views of Additional Director General of Police to transfer the cases to Central Bureau of Investigation. On 01.08.2018, the Additional Chief Secretary to the Government wrote to Additional Advocate General of the High Court of Madras bringing into notice the development. In the end of the letter, it was stated by Additional Chief Secretary to the Government that High Court be apprised about the decision of the Government and when the above cases are taken up for hearing and whether any orders from the Court are required. On 01.08.2018 itself, the Additional Advocate General of Tamil Nadu brought to the notice of Additional Chief Secretary that he has brought

into the notice of the Madras High Court about the communication dated 01.08.2018 on which the Bench has observed that the communication, decisions or orders, as the case may be placed before the Court on its next hearing on 08.08.2018. On 01.08.2018 itself, the State Government issued an order according its consent to transfer all cases being investigated by the Special Team constituted for the Idol cases and all such future cases to the Central Bureau of Investigation.

13. Two Writ Petitions being Writ Petition No.20392 of 2018 - Elephant G.Rajendran Vs. The State of Tamil Nadu and Writ Petition No. 20963 of 2018 - Traffic Dr. K.R.Ramaswamy Vs. State and Others, has been filed in the Madras High Court praying for quashing the Government Order dated 01.08.2018, transferring the investigation to the Central Bureau of Investigation. The above writ petitions were heard by the Division Bench and the Division Bench of the High Court vide its judgment dated 30.11.2018 allowed both the above writ petitions quashing the Government Order dated 01.08.2018 and issued several directions.

The conclusion of the Court is recorded in paragraph No.45. In paragraph Nos.45 to 48 of the judgment, the High Court has held:-

"45. This Court is empowered under Article 226 of the Constitution to pass any orders to secure the ends of justice. We have already expressed our anguish over the conduct of the State in handling the matter insensitively. The directions issued by this Court and confirmed by the Hon'ble Supreme Court have not been complied in full. We have also expressed that we are satisfied with the credentials of the Mr.A.G.Pon Manickavel, I.P.S, Inspector General of Police and the steps taken by him in the process of investigation. Hence, the following directions are given, which shall be implemented by the State forthwith:

(1)Mr.A.G.Pon Manickavel, I.P.S, Inspector General of Police is hereby appointed as a Special Officer to head Idol Wing~CID, Chennai to deal with the cases of theft of idols and antiques in all stages, for a period of one year, who shall assume charge on his superannuation on 30.11.2018 forthwith and function from the same camp with the same facilities. The Government shall pass orders to that effect. It is made clear that any delay by the Government in passing appropriate orders, shall not curtail the powers of Mr.A.G.Pon Manickavel, I.P.S. to head the team and investigate the cases and take appropriate action as per law.

(2)The members of the Special team constituted on the basis of the orders of this Court on 21.07.2017

shall continue to be part of the team and any such member as requested by Mr.A.G.Pon Manickavel, I.P.S., shall be spared by the Government from the Tamil Nadu Police Force.

(3) Mr.A.G.Pon Manickavel, I.P.S., Inspector General of Police, shall draw the same pay and benefits that were available to him at the time of his retirement for the entire tenure of his term as Special officer.

(4) The Special Officer, hereby appointed shall investigate the cases thoroughly and periodically submit all the reports before the appropriate Court as per law and also before this Court in a sealed cover to enable this Court to monitor the investigation.

(5) The Special Officer and his team shall continue to not only investigate and file charge Sheets and prosecute in the pending cases but shall also continue to do so in the cases arising in future during his tenure or until further orders from this Court.

(6) The CBI and other agencies of Central Government shall continue to give appropriate support to the Special officer and his team.

(7) No action or enquiry against the Special officer or any member of his team shall be initiated except with the concurrence of this Court. If any materials are there to rely upon for necessary action, the same be placed before this court for further directions.

(8) The State shall forthwith issue appropriate communications to concerned Departments of the State including the HR & CE Department to extend their fullest co-operation to the Special Team and furnish necessary particulars and documents sought by them.

(9) The State shall create a separate Division to handle the financial aspects of the functioning of the team so as to ensure that no action is delayed for paucity of funds and separate account is to be created for this purpose and reasonable amount must be available to meet out the daily overheads.

(10) All the directions issued by this Court shall be implemented without any delay or demur and a report shall be submitted regarding the action taken.

46. With the above directions, the writ petitions are allowed. Consequently, other connected petitions in W.M.P.Nos.23975, 23976, 24609 and 26868 of 2018 are closed. No costs.

47. When we are about to pronounce this order, the petitioner in WP.No.20392 of 2018 produced a copy of the proceedings issued by the Government of Tamil Nadu in Police Note No.SC/19/2018 dated 29.11.2018 indicating that one Thiru.Abhay Kumar Singh, IPS, Additional Director General of Police/Chief Vigilance Officer, Tamil Nadu Newsprint and Papers Limited, Karur has been transferred and posted as Additional Director General of Police, Idol Wing, CID, Chennai by upgrading the post of Inspector General of Police, Idol Wing CID.

48. We are of the view that the State all along, is not inclined to continue with the investigation of idol theft cases as the same were transferred to CBI despite pendency of the stay order of this Court. It is also pertinent to note that after the orders were reserved, they have upgraded the post of the Additional Director General of Police and appointed an officer, by order dated 29.11.2018, which action is inappropriate and it would amply prove the transfer of cases in a most hurried manner within a single day i.e., on 01.08.2018. Similarly, the manner in which the present order dated 29.11.2018 has been passed, will speak for itself. Hence, notwithstanding the order dated 29.11.2018 passed by the Government, which has become redundant, Tr.A.G.Pon Manickavel shall take charge as Special Officer to head the Idol Wing as ordered by us, in order to preserve the idols as well as recovery of the stolen idols to uphold the cultural heritage of this land."

14. State of Tamil Nadu aggrieved by the said judgment has filed these appeals.

15. Shri K.K. Venugopal, learned Attorney General has appeared for the State of Tamil Nadu. Shri Mukul Rohatgi, learned senior counsel has appeared for Director General of Police, Tamil Nadu. We have heard Shri R. Basant, learned senior counsel appearing for the respondent No.1 and we have also heard learned counsel, who has appeared for the PIL

petitioner- Traffic Dr. K.R. Ramaswamy. We have also heard, learned counsel, who appeared for intervenor. Shri Mohan Parasaran, Senior Advocate has appeared for respondent No.9.

16. Learned Attorney General submits that High Court exceeded its jurisdiction under Article 226 in appointing respondent NO.2 as a Special Officer to head Idol Wing, whereas respondent No.2 was going to be superannuated on 30.11.2018 itself. In the writ petition, challenge was to the Government order dated 01.08.2018 for transferring the investigation, which was being carried on by Idol Wing of the CID to the CBI. Without their being any prayer, the respondent No.2 has been directed to continue to head the Idol Wing even after his superannuation. The respondent No.2 after superannuation could not have exercised any power of police officer as entrusted on a police officer under the Code of Criminal Procedure. Retired police officer is not a police officer for purposes of registering a FIR or carrying out the investigation or submitting a charge sheet, nor a retired police officer can present a case in Court.

The State Government was fully justified in transferring the investigation of Idol theft cases to CBI for fair investigation. Even the learned Single Judge while hearing Crl.O.P. No. 8960 of 2017 and Crl.O.P. No. 12060 of 2017 had made observation that in event appropriate infrastructure and facilities are not provided to Idol Wing, the Court may direct for investigation to be carried out by CBI.

17. High Court, exercising jurisdiction under Article 226 cannot take over the power of Superintendent of Police conferred on the State Government under Sections 3 and 4 of the Police Act, 1861. It was not within the scope of Article 226 so as to direct by the High Court to take over a full-fledged wing of the Executive (Idol Wing-CID) from the control of the Executive. The direction to appoint respondent NO.2 as Special Officer to head the Idol Wing-CID has been passed without affording an opportunity to the State. The State has already appointed one Abhay Kumar Singh, by Government Order dated 29.11.2018, as Additional Director General of Police, Idol Wing, CID, Chennai, which order has been erroneously held

by the High Court to be redundant. When respondent No.2 was going to be superannuated on 30.11.2018, State was fully justified in making an arrangement to head the Idol Wing of the CID. The directions issued by the High Court, as noticed in paragraph No.45 of the judgment are all beyond the scope of the jurisdiction of the High Court under Article 226. Although, this Court as well as the High Courts in several judgments has directed for carrying on investigations by retired personnel but in none of the cases, the question was decided as to whether it is competent on behalf of the High Court to direct for carrying out investigation by retired personnel. The power given to this Court to pass orders under Article 142 are not available to the High Court under Article 226. The High Court, while exercising jurisdiction under Article 226 has virtually exercised the jurisdiction given to this Court under Article 142 of the Constitution. The respondent No.2 has provided the details of cases so as to transfer it to the CBI as per its request.

18. Shri Mukul Rohatgi, learned senior counsel appearing for the Director General of Police submits that impugned judgment of the High Court is beyond the scope of Article 226. It is submitted that High Court erred in directing for continuation of respondent No.2 even after superannuation. There have been several complaints against respondent No.2 relating to his functioning and respondent NO.2 was not a person who could have been allowed to head the Idol Wing even after his superannuation. It is submitted that in the writ petitions, respondent No.2 has filed certain self-serving documents on 27.11.2018 to which no opportunity was there to the appellants to rebut the claim of respondent No.2 that he has done much good work pertaining to theft and recovery of Idols. Shri Rohtagi has referred to extradition of one person, namely, Subhash Chandra Kapoor, who was extradited from Germany. It is submitted that several cases of further extradition are not being processed on account of unwarranted delay with regard to case of Subhash Chandra Kapoor. It is submitted that due to inaction on the part of the Idol Wing with regard prosecution of Subhash

Chandra Kapoor, other cases of other accused for extradition are not being even processed. It is submitted that impugned judgment of the High Court has created a shield to respondent No.2 so that he is not answerable to anyone. It is submitted that there was no challenge to the order dated 29.11.2018 by which the Additional Director General of Police was posted in the Idol Wing to head it. The order having not been challenged or set aside, the respondent No.2 cannot be allowed to head the Idol Wing, when Additional Director General is a superior Officer. It is submitted by Shri Rohtagi that PIL petitioner - Elephant G. Rajendran even before 30.11.2018 has written to the Government that respondent No.2 be allowed to continue to head the Idol Wing. There is no bonafide in filing the Public Interest Litigations. PIL petitioner and respondent No.2 are hands in gloves.

19. Learned counsel appearing for the applicant in I.A. No. 24724 of 2019 submits that respondent No.2 has constantly tried to malign and defame the officers of HR & CE Department. Several senior

officers of HR & CE Department were arrested without any cogent grounds. The Commissioner in its letter dated 31.07.2018 written to the Director General of Police has highlighted several misdeeds of the Idol Wing. The learned counsel for the applicant submits that officers of HR & CE Department have been unnecessarily castigated by the Idol Wing. It is submitted that applicant be permitted to intervene in the matter so that this Court may be apprised of the correct facts.

20. Shri Mohan Parasaran, learned senior counsel appearing for the respondent No.9 submits that respondent No.9 is neither appropriate nor necessary party, who has been unnecessarily impleaded in the writ petition before the High Court. It is submitted that respondent No.9 is a respected person and an incorrect allegation has been made against him. Respondent No.9 is respectable person of the Society, who has unnecessarily been dragged.

21. Shri R.Basant, learned senior counsel appearing for Elephant G. Rajendran, PIL petitioner, refuting the submission of learned Attorney General submits

that judgment of the High Court is well within the scope and ambit of Article 226. Shri Basant submits that submission raised questioning the bonafide of PIL petitioner is an afterthought and has no substance. The PIL petitioner has done commendable public work. Elephant G. Rajendran had filed a PIL petition in the year 2001 with regard to an injured Elephant in which High Court permitted the PIL petitioner to bring doctors from foreign countries. The PIL petitioner brought doctors from foreign countries and got the Elephant cured. Several Public Interest Litigations have been filed by Elephant G. Rajendran in public interest. It is specifically noted by the High Court in the impugned judgment that Additional Advocate General himself has submitted that there are no question on the bonafide of the petitioner. It is submitted that various complaints in respect of respondent No.2, which are brought on the record are complaints, which have been deliberately obtained after the judgment of the High Court. Most of the complaints against respondent No.2 have been obtained by obliging Police Officials on one day, i.e., on 18.12.2018, which is clear from

the complaints brought on the record alongwith I.A. No. 10291 of 2018.

22. It is submitted by Shri Basant that High Court has jurisdiction under Article 226 to direct for constituting a Special Investigation Team headed by respondent No.2. He submits that conferring of the police power on non-police officer is not an anathema to law. Extraordinary situation calls for extraordinary remedy. The jurisdiction of the High Court under Article 226 is wide and plenary. There have been several orders of different High Courts as well as this Court where Special Investigation Team were constituted consisting of retired personnel. The transfer of the investigation of the Idol cases before the Idol Wing to the CBI was nothing but a ruse to remove respondent No.2 from not carrying out the investigation. Several officers of HR & CE Department were involved and were accused in different First Information Reports. The Government has acted on to save officers of HR & CE Department. Shri Basant submits that the present is not a case where High Court exercised any jurisdiction under

Article 142 of the Constitution of India as contended by the appellant. He further submits that the present is a case where this Court need not exercise its jurisdiction under Article 136. The High Court having exercised jurisdiction well within its powers, there is no extraordinary situation, where this Court may grant special leave in the present case. High Court has exercised its jurisdiction to ensure fair and proper investigation and prosecution in Idol theft cases. Replying to lapses as alleged on the part of respondent No.2 with regard to Subhash Chandra Kapoor, it is submitted that prosecution agency to prosecute cases is State. It is State, which is prosecuting extradited accused Shri Subhash Chandra Kapoor and no blame can be put on respondent No.2 in the above regard.

23. Learned counsel appearing for the second PIL petitioner, i.e., Traffic Dr. K.R. Ramaswamy submits that free and fair trial is fundamental right. He submits that when the Director General of Police can be given 02 years extension in the year 2017, why such extension could not have been granted to

respondent No.2. Respondent No.2 was appointed as Special Officer in Idol Wing in 2012 and since then he has been efficiently carrying on his duties. It is submitted that order of the High Court dated 21.07.2017 passed in Crl.O.P. No. 8960 of 2017 and Crl.O.P. No. 12060 of 2017, respondent No.2 was directed to continue as head of the Idol Wing. The Director General of Police aggrieved by the said order has filed a special leave petition before this Court, which was dismissed on 01.09.2017.

24. It is submitted that it is on account of the letter dated 31.07.2018 written by the Commissioner, HR & CE Department to the Director General of Police that hurriedly decision was taken to transfer the cases to CBI. The letter of Commissioner dated 31.07.2018 and within 24 hours, a decision was taken by the State Government to transfer the cases to the CBI in hurried manner. The Commissioner in his letter dated 31.07.2018 made allegations against Idol Wing, on which allegations, without there being any investigation or inquiry, the decision was taken to transfer the cases to CBI, which was done with intent

to take away the investigation from respondent No.2, who was unearthing several unholy cases and was taking action against the officers of HR & CE Department and some police officers. The decision of the State to transfer it to CBI was not bonafide. It is further submitted that CBI itself in its letter dated 20.09.2018, which was filed before the High Court, submitted that CBI will extend its full cooperation and support in the matters of extradition of accused, issue of Red Corner Notices and coordinating with Interpol and it shall extend all its cooperation to SIT, which is already investigating the Idol theft cases. CBI has expressed its unwillingness to take up large number of Idol theft cases under its fold. As regards not challenging G.O. dated 29.11.2018, it is pointed out that it was produced on the eve of the judgment and there was time to challenge it.

25. Learned Attorney General in his rejoinder submission contends that High Court cannot pass any order in violation of law. It is submitted that the officers of Indian Police Services are governed by

the All India Services Act, 1951 and the Rules made thereunder. The State has no power to grant extension of service of IPS Officers. It is submitted that under the All India Services (Death-cum-Retirement Benefits) Rules, 1958, only few of the incumbents of the posts can be given extension in services by the Central Government, which rule does not include extension for Inspector General of Police, the post held by respondent No.2. Learned Attorney General submits that even though there was O.M. dated 18.05.1977 issued for extension/re-employment of Central Government servants beyond the age of superannuation, it is now no longer available in view of issuance of O.M. dated 09.12.2002. After the O.M. dated 09.12.2002, no re-employment can be granted beyond the age of superannuation of 60 years. Learned Attorney General again referring to the various directions in the impugned order contends that the directions are contrary to the provisions of Code of Criminal Procedure and fall outside the law. He submits that each and every direction given in the impugned judgment is contrary to some or other law.

26. We have considered the submissions of the learned counsel for the parties and have perused the records.

27. Following are the main issues, which arise for consideration in the present appeals:-

- (i) Whether the State of Tamil Nadu was justified in transferring all the under investigation cases being investigated by the Special Team constituted for Idol theft cases and all such future cases to the Central Bureau of Investigation vide its G.O. dated 01.08.2018?
- (ii) Whether the impugned judgment of the High Court dated 30.11.2018 quashing the Government Order dated 01.08.2018 is sustainable?
- (iii) Whether the High Court, in exercise of jurisdiction under Article 226 of the Constitution of India can appoint a police officer after his superannuation to head a Special Investigation Team (S.I.T.) to carry out investigations and other functions, which can be exercised by a

police officer under the Code of Criminal Procedure?

- (iv) Whether the impugned judgment of the High Court dated 30.11.2018 directing respondent No.2 to continue to head the Idol Wing of C.I.D. after his superannuation on 30.11.2018 is sustainable?
- (v) Whether the 10 directions issued by the High Court in Paragraph No.45 of the impugned judgment are contrary to law and are unsustainable being beyond the scope of Article 226 of the Constitution of India?
- (vi) Whether the High Court could have declared the Government Order dated 29.11.2018 appointing Thiru. Abhay Kumar Singh, IPS, Additional Director General of Police, Idol Wing - C.I.D., Chennai as redundant without there being any challenge to the said Government Order before the High Court in the Writ Petitions, in question?

Issue Nos. 1 and 2

28. Both the above issues being inter-connected are

being taken together. Few background facts before issuance of Government order dated 01.08.2018 need to be noted. The Idol Wing of the Criminal Investigation Department(CID) is a special feature pertaining to State of Tamil Nadu. The State of Tamil Nadu is blessed with most ancient temples in the country. As noted above under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 there are various authorities to ensure proper administration and governance of Hindu religious and charitable endowments Tamil Nadu. The HR & CE Department has obligation and responsibilities of managing and maintaining temples' properties including the Idols. There being large number of cases pertaining to theft, missing and misappropriation of Idols valuing in several crores, the State of Tamil Nadu had constituted the Idol Wing by the Government Order issued in the year 1983. The Madras High Court while deciding Criminal O.P. Nos.8690 and 12060 of 2017 in its order dated 21.07.2017 has made following observation in paragraph 12:

"12. The HR & CE department is the custodian of most of the temples and the

properties including the idols belonging to them. It is their primary duty to protect the temples and safeguard the valuable idols/antiques, which, this Court with great anguish, expresses that the department has failed to do. It is startling to find that the HR & CE department with all its income from major temples, has not been able to maintain historical temples and safeguard the Idols, which in market, have antique value based on their age. Some temples in the State have also been recognised by the UNESCO as heritage sites. Many temples constructed at least 1500 years ago or much before the temples recognised by UNESCO, are in ruins. Even the daily rituals are not performed. Some temples remain closed throughout the day with no one to even lighten the lamps. Neither the Archaeology Department nor the HR & CE Department has shown interest to identify and protect them. This has also come to the advantage of the miscreants, who have laid their hands on the Idols."

29. The above Criminal O.P. were filed for transferring all investigations regarding theft of 6

Idols from the Commissioner, HR & CE,
Nungambakkam

District, Chennai to Additional Director General of Police, Economic Offences Wing, CID, Chennai. The High Court while deciding Criminal O.Ps in its judgment dated 21.07.2017 has observed that various complaints given to Joint Commissioner were not addressed. In paragraph 16 the High Court made the following observation:

"16. In the cases on hand, the erring officials have had a free hand in handling the idols as if it was their private property. It is clear from the documents produced by the petitioner that the various complaints of the petitioner in CrI.O.P.No.8690/2017 have not been addressed. Curiously, there is no denial about the existence of the tunnel and stocking the PWD guest house. Despite the fact that the 6th respondent found that the idols were missing, no complaint has been lodged till date. It appears that the ball is passed on from one office to another, to protect the officials. The learned counsel for the petitioner has sought for a transfer of the investigation from the 6th respondent to the Idol Wing, CID, Chennai. However, considering the nature of the offence that 6 Idols under the custody of the department has gone missing, not only does the matter require investigation by the idol wing, CID, but also departmental action must be initiated against the relevant officials. This Court is also not in consonance with the reply given by the Deputy Superintendent of Police of Idol wing that a complaint should only be lodged with the local police station as per Section 154 Cr.P.C."

30. The High Court observed that considering the nature of the offences, 6 Idols under the custody of the Department had gone missing, not only the matter required investigation by the Idol Wing, CID departmental action was also required to be taken by the relevant officials. While the Criminal

O.P.Nos.8690 and 12060 of 2017 were heard, it was brought to the notice of the High Court that respondent No.2 who was heading Idol Wing has been transferred. The High Court noticed that respondent No.2 has been supervising the cases and has efficiently traced and recovered several Idols worth several crores, hence, for the sake of continuity and speedy completion of the investigation, respondent No.2 must continue despite the work assigned presently. In paragraph 19 following observation has been made:

"19. After much dejection from this Court as to why no action has been taken, an order of suspension dated 29.06.2017 was passed and a copy of the same was produced to the Court on 30.06.2017, while at the same time, it was brought to the knowledge of this Court that Mr.A.G.Ponn Manickavel, Inspector General of Police, Idol Wing was transferred. Though it could be claimed as a routine transfer, this Court feels, it is otherwise. Also, the officer has been supervising the cases and has efficiently traced and recovered several Idols worth several crores. It is not that the succeeding officer is less efficient, but considering that Mr.A.G.Ponn Manickavel and his team have extensively travelled throughout the country and are aware of the modus operandii of the culpritis. For the sake of continuity, speedy completion of the investigation and completion of the pending cases, this Court is of the view that Mr.A.G.Ponn Manickavel, Inspector General of Police and his team must continue despite the

work assigned presently.”

31. As noted above against the order of the High Court dated 21.07.2017, the Director General of Police filed an SLP in this Court which was disposed of on 01.09.2017 but the order directing respondent No.2 to be continued as head of the Idol Wing was not interfered with by this Court. Consequently, respondent No.2 was continuing to head the Idol Wing. It is further to be noted that the High Court vide its order dated 21.07.2017 has specifically directed that departmental proceedings must be initiated against the officials of the HR and CE Department. FIRs were registered in which Officers of HR & CE Department were also made accused and several officers were arrested. It was on 31.07.2018 that D.O. letter was written by Commissioner, HR & CE to Director General of Police. The letter begins with the words:

“This is to inform you of the increasing ways in which the Idol Wing of the Police is harassing officials of this Department threatening them with filing of FIRs in case they do not agree to carry out its wishes filing FIRs on the basis of

complaints by Public without even a preliminary enquiry, refusing to file FIR on the basis of complaints by the Department/Temple authorities, undermining the authority of the temple/ Department authorities including the Commissioner, humiliating and hurting the reputation of officials through public investigation of cases and their depiction in the social and conventional media and interfering in the legitimate functioning of this Department."

32. In the letter dated 31.07.2018 the Commissioner pointed out various complaints of his officers which were received by him in writing and orally. The Commissioner stated that HR and CE Department is facing a crisis. The Commissioner wrote to the Director General to ensure a fair and confidential investigation and bring the culprits to book, without damaging the reputation of honest officials and the Department. By a letter of 31.07.2018 itself Additional Director General of Police made recommendation to the Director General of Police to transfer all cases under investigation being investigated by the Special Team constituted for the Idol Theft cases to the CBI. The Director General on the next day i.e. 01.08.2018 recommended for transferring the cases to the CBI, on the same day the GO dated 01.08.2018 was issued. The entire

process for transferring cases to the CBI was completed within one day on complaints submitted by the Commissioner. We have already noted that the High Court order dated 21.07.2018 has directed for holding departmental inquiry against certain officers of HR & CE. It is already noticed that FIRs were registered against the officers of the HR & CE Department and other accused. Thus, it was known fact that there were allegations and FIRs against the few officers and complaints submitted by the Commissioner against the Idol Wing of the Police ought not to have been accepted outrightly without conducting any enquiry. Even if there was some truth in the complaints made by the Commissioner, the same ought to have been enquired and informed decision ought to be taken by the Government. The Idol Wing had been carrying out its work for the last more than three decades, several Idols were recovered and cases launched and prosecutions were accomplished. On a single letter of the Commissioner suddenly no opinion could have been formed that Idol Wing of the Department is not doing its job. The Higher Police authorities and State was fully competent to take action against any officer of

the Idol Wing, if any excess or misdeeds were reported against any officer of the Idol Wing. The letter of the Commissioner dated 31.07.2018 does not refer to any written complaint by HR & CE Department to Police, higher authorities or the Government in the above regard. We, thus, are of the view that the decision to transfer the cases to CBI was hurriedly taken within one day on a complaint received by the Commissioner without making any inquiry and the decision of the Government cannot be said to be an informed decision.

33. Another aspect of the matter in the above context needs to be noted. That the transfer was made of all the under investigation cases being investigated by the Special Team constituted for Idol Theft cases and all such future cases to the CBI. There were more than 100 cases under investigation with the Idol Wing at the relevant time. In the above context, it is relevant to notice the letter dated 19/20.09.2018 of the Central Bureau of Investigation which was brought before the High Court by memo and is filed as Annexure P/18 to the appeal which is to the following

effect:

"Sub: Writ Petition NO.20392/2018 filed
by Shri Elephant G.Rajendran - reg.

Please refer to the subject cited above.

In this connection, it is requested that when the matter comes up for hearing, it may be stated that Considering the large number of Idol Theft Cases pending in various stages and also the future idol theft cases likely to come up, and considering the severe shortage of manpower, CBI will extend its full cooperation and support in the matters of Extradition of accused, issue of Red Corner Notices and coordinating with Interpol, etc., to the Special Investigation Team, which is already investigating the Idol Theft Cases.

HoB, CBI, SCB, Chennai."

34. The CBI by its communication dated 20.09.2018 in reference to subject matter in the writ petition has expressed its opinion that considering the large number of Idol Theft Cases pending in various stages and also the future Idol Theft Cases likely to come up, and considering the severe shortage of manpower, CBI will extend its full cooperation and support in the matters of Extradition of accused, issue of Red Corner Notices and coordinating with Interpol, etc., to the Special Investigation Team, which is already

investigating the Idol Theft Cases. The said letter is politely expressing inability of the CBI to undertake such large number of cases.

35. The High Court in paragraph 32 of the impugned judgment has given detail of reasons for quashing the order dated 01.08.2018. It is relevant to notice that the High Court in its order dated 21.07.2017 has already directed to constitute a SIT of the Officers of the Idol Wing to carry on the investigation and follow up pending trial. The compliance of the aforesaid order was under consideration before the Court. The Additional Chief Secretary to the Government, after receiving letter from Additional Director General of Police, wrote a letter dated 01.08.2018 to the Additional Advocate General in which following request was made:

"9. I am therefore, to request you to appraise the Hon'ble High Court of Madras about the decision of the Government when the above cases are taken up for hearing and whether any orders from the Court are required."

36. The Advocate General also brought to the notice of the Bench of the letter dated 01.08.2018 and wrote

back to the Additional Chief Secretary to the Government that Division Bench of the High Court has observed that communication, decisions or orders be placed before the Court in the next hearing to be held on 08.08.2018. When the matters pertaining to Idol Thefts were already under investigation by SIT constituted under the order of the High Court, it was appropriate that the State Government ought to have apprised the Court before issuing any Government order for transferring the cases. In any view of the matter looking to the large number of cases of Idol Thefts cases and cases to come in future regarding Idol Thefts, the CBI was not appropriate investigating agency to be requested by the State. The CBI itself has expressed its inability to undertake such huge exercise, the High Court did not commit any error in quashing the Government order dated 01.08.2018.

Issue No.3 and 4

37. The submission which has been much pressed by the learned Attorney General before us is the lack of the jurisdiction of the High Court under Article 226 to

direct for appointment of retired Police Officer to head a SIT after his superannuation. Three-fold submissions have been made by the learned Attorney General in the above regard. Firstly, the High Court exercising jurisdiction under Article 226 cannot take over the power of the Superintendent of Police conferred on the State Government under Sections 3 and 4 of the Police Act, 1861. Secondly, Under the Code of Criminal Procedure, it is the Police Officer who is entitled to carry investigation, arrest, submit charge sheet and do all other acts as a Police Officer. Thirdly, the Respondent No.2 after superannuation no longer continued as Police Officer and could not have exercised any power or jurisdiction as conferred on Police officer under the Cr.P.C.

38. What is the ambit and scope of powers of the constitutional courts exercising the jurisdiction under Article 226 needs to be looked into. The High Courts in India were created by Indian High Courts Act, 1861. Sections 9 and 10 of the Indian High Courts Act, 1861 provided for jurisdiction and power

of the High Court. Section 106 of the Government of India Act, 1915 and Section 223 of the Government of India Act, 1935 provided for jurisdiction of the existing High Courts. Article 226 of the Constitution of India confers to the High Courts wide powers in the matter of issuing writs which they never possess before. Article 226 of the Constitution is couched in very wide words, power given to the High Court are both plenary and inherent. The power under Article 226 is not confined only to issue specified writs but power conferred to the High Court is to issue directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of the rights conferred by Part III and for any other purpose.

39. The scope and ambit of Article 226 came for consideration before this Court in **Dwaraka Nath vs. Income-tax Officer, AIR 1966 SC 81**. Justice K. Subba Rao speaking for the Court held:

“(4).....This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide

language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself....."

40. Justice Krishna Iyer speaking for this Court in **Rohtas Industries Ltd. And another vs. Rohtas Industries Staff Union and others, (1976) 2 SCC 82,** held that the extended power of the High Court under Article 226 is as wide as the amplitude of the language used. In paragraph 9 following was held:

"9. The expansive and extraordinary power of the High Courts under Article 226 is as wide as the amplitude of the language used indicates and so can affect *any person* – even a private individual – and be available *for any* (other) *purpose* – even one for which another remedy may exist. The amendment to Article 226 in 1963 inserting Article 226 (1-A) reiterates the targets of the writ power as inclusive of any person by the expressive reference to 'the *residence* of such person'. But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a china shop. This Court has spelt out wise and clear restraints on the use of this extraordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power has, by and large, been the people's sentinel on the *qui vive* and to cut back on or liquidate that power may cast a peril to human rights....."

41. Again, this Court in **Air India Statutory Corporation and others vs. United Labour Union and others, (1997) 9 SCC 377**, held that the Founding fathers placed no limitation or fetters under Article 226 of the Constitution except self-imposed limitations. This Court held that 'The arm of the

Court is long enough to reach injustice wherever it is found'. In paragraph 59 following has been observed:

"59. The Founding Fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as *sentinel on the qui vive* is to mete out justice in given facts....."

42. The above authorities of this Court clearly lay down that power given to the High Court under Article 226 is power of very wide nature which does not contain any fetter except self-imposed restrictions. It is well settled that the High Court while exercising jurisdiction under Article 226 shall not issue any direction which is contrary to law.

43. The challenge raised before us by the learned Attorney General is that after superannuation of Police Officer he cannot be entrusted the power of investigation or other powers under Cr.P.C. which entrustment runs contrary to the statutory scheme and cannot be held to be available under Article 226. We

may notice few decisions of the High Courts and this Court which may be relevant for the issue under consideration.

44. A three-Judge Bench of this Court on monitoring of criminal investigation has laid down that in appropriate cases this Court can monitor the Criminal Investigation especially when persons occupying high position in society are accused. This Court in **Vineet Narain and others vs. Union of India and another, (1998) 1 SCC 226**, held that Govt. Agencies including CBI had not carried out their public duty to investigate the offences disclosed; this Court would monitor the investigations. This Court laid down following in paragraphs 8 and 9:

"8. The sum and substance of these orders is that the CBI and other governmental agencies had not carried out their public duty to investigate the offences disclosed; that none stands above the law so that an alleged offence by him is not required to be investigated; that we would monitor the investigations, in the sense that we would do what we permissibly could to see that the investigations progressed while yet ensuring that we did not direct or channel those investigations or in any other manner prejudice the right of those who might be accused to a full and fair trial. We made

it clear that the task of the monitoring court would end the moment a charge-sheet was filed in respect of a particular investigation and that the ordinary processes of the law would then take over. Having regard to the direction in which the investigations were leading, we found it necessary to direct the CBI not to report the progress of the investigations to the person occupying the highest office in the political executive; this was done to eliminate any impression of bias or lack of fairness or objectivity and to maintain the credibility of the investigations. In short, the procedure adopted was of "continuing mandamus".

9. Even after this matter was brought to the Court complaining of the inertia of CBI and the other agencies to investigate into the offences because of the alleged involvement of several persons holding high offices in the executive, for quite some time the disinclination of the agencies to proceed with the investigation was apparent. The accusation, if true, revealed a nexus between high-ranking politicians and bureaucrats who were alleged to have been funded by a source linked with the source funding the terrorists. In view of the funding also through foreign currency, some undesirable foreign elements appeared to be connected. This revealed a grave situation posing a serious threat even to the unity and integrity of the nation. The serious threat posed to the Indian polity could not be underscored. The obvious need for an expeditious and thorough probe which had already been delayed for several years could not but be countenanced. The continuing inertia of the agencies to even commence a proper investigation could not

be tolerated any longer. In view of the persistence of that situation, it became necessary as the proceedings progressed to make some orders which would activate the CBI and the other agencies to at least commence a fruitful investigation. Merely issuance of a mandamus directing the agencies to perform their task would be futile and, therefore, it was decided to issue directions from time to time and keep the matter pending requiring the agencies to report the progress of investigation so that monitoring by the court could ensure continuance of the investigation. It was, therefore, decided to direct the CBI and other agencies to complete the investigation expeditiously, keeping the court informed from time to time of the progress of the investigation so that the court retained seisin of the matter till the investigation was completed and the charge-sheets were filed in the competent court for being dealt with, thereafter, in accordance with law."

45. When the Government Agencies failed in unearthing offences of magnitude the doors of constitutional courts have been knocked by citizens to come to their rescue. One of the tools of this Court to advance justice and fulfil the constitutional objectives is recognizing a special category of litigation, namely, PIL. Durga Das Basu in Commentary on the Constitution of India Vol.6 8th Edition 2010 while delineating scope and object of such litigation states:

"1. The grievance in a public interest action is about the content and conduct of Government action in relation to the constitutional or statutory rights of segments of society and in certain circumstances the conduct of Government policy. The relief to be granted looks to the future and is, generally, corrective rather than compensatory which, sometimes, it also is. The Court has a more dynamic and positive role. It often does seek the assistance of expert panels, commissioners, advisory committees etc. The relief implies affirmative action. The remedy is both imposed, negotiated or quasi-negotiated."

46. A Constitution Bench of this Court speaking through Bhagwati, CJ in **M.C. Mehta and another vs. Union of India and others, 1987 (1) SCC 395**, while considering the nature of PIL and power under Article 32 held that under Article 32 this Court is free to devise any procedure appropriate for particular purpose of the proceeding. In paragraphs 6 and 7 following was stated:

"6. So far as the power of the court under Article 32 to gather relevant material bearing on the issues arising in this kind of litigation, which we may for the sake of convenience call social action litigation, and to appoint Commissions for this purpose is concerned, we endorse what one of us, namely, Bhagwati, J. as he then was, has said in his judgment in *Bandhua Mukti Morcha case*. We need not repeat what has

been stated in that judgment. It has our full approval.

7. We are also of the view that this Court under Article 32(1) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32(2) the court has the implicit power to issue whatever direction, order or writ is necessary in a given case, including all incidental or ancillary power necessary to secure enforcement of the fundamental right. The power of the court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed vide *Bandhua Mukti Morcha case*. If the court were powerless to issue any direction, order or writ in cases where a fundamental right has already been violated, Article 32 would be robbed of all its efficacy, because then the situation would be that if a fundamental right is threatened to be violated, the court can inject such violation but if the violator is quick enough to take action infringing the fundamental right, he would escape from the net of Article 32. That would, to a large extent, emasculate the fundamental right guaranteed under Article 32 and render it impotent and futile. We must, therefore, hold that Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the court to grant such remedial relief may include the power to award

compensation in appropriate cases. We are deliberately using the words "in appropriate cases" because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded by the court in a petition under Article 32. The infringement of the fundamental right must be gross and patent, that is, incontrovertible and *ex facie* glaring and either such infringement should be on a large scale affecting the fundamental rights of a large number of persons, or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person or persons affected by such infringement to initiate and pursue action in the civil courts. Ordinarily, of course, a petition under Article 32 should not be used as a substitute for enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary process of civil court. It is only in exceptional cases of the nature indicated by us above, that compensation may be awarded in a petition under Article 32. This is the principle on which this Court awarded compensation in *Rudul Shah v.*

⁵
State of Bihar. So also, this Court awarded compensation to Bhim Singh, whose fundamental right to personal liberty was grossly violated by the State of Jammu and

⁶
Kashmir. If we make a fact analysis of the cases where compensation has been awarded by this Court, we will find that in all the cases, the fact of infringement was patent and incontrovertible, the violation was gross and its magnitude was such as to shock the conscience of the court and it would have been gravely unjust to the

person whose fundamental right was violated, to require him to go to the civil court for claiming compensation."

What is said about Article 32 of the Constitution is also true for jurisdiction of High Courts under Article 226.

47. This Court time and again forged and fashioned new designs to enforce fundamental rights and to redress other grievance of the people. There are several instances of this Court and High Courts issuing directions for carrying out investigation by Special Investigation Team which consisted even retired officers. This Court in **Guruvayoor Devaswom Managing Committee and another vs. C.K. Rajan and others, (2003) 7 SCC 546**, has elaborately noticed the scope of Public Interest Litigation and has catalogued the principles evolved by this Court in paragraph 50 of the judgment. Eleven principles have been summarized. In sub-para (ix) this Court held:

"50.(i) XXX XXX

(ix) The Court in special situations may appoint a Commission, or other bodies for the purpose of investigating into the

allegations and finding out facts. It may also direct management of a public institution taken over by such Committee. (See *Bandhua Mukti Morcha, Rakesh Chandra Narayan v. State of Bihar* and *A.P. Pollution Control Board v. Prof. M.V. Nayudu.*)”

48. Different High Courts and this Court have passed several orders constituting Special Investigation Team to carry out investigations in cases where such requirement was found necessary. Before Division Bench of Bombay High Court in **Ranjitsing Brahmajeetsing Sharma and Ors. Vs. Kisan Baburao Hazare and Ors., 2004 (3) MhLJ 760**, was a case where SIT was constituted which consisted of retired Director General of Police. Initially order was passed on 04.09.2003 by consent of the parties with regard to SIT to be headed by Mr. S.S. Puri, retired Director General of Police. When a subsequent order dated 24.09.2003 was passed providing that Mr. S.S. Puri will exercise all powers exercisable by Director General of Police, as if he is in service and the Government Resolution was issued on 26.09.2003 to the said effect, an application was filed for recalling the subsequent direction dated 24.09.2003. The

submission was made before the Court that Mr. S.S. Puri being not in service and as a result of direction issued by the Court there were two Director Generals of Police in the State of Maharashtra which was contrary to the provisions of the All India Services Act, 1951 read with the Indian Police Service (Cadre) Rules, 1954 and I.P.S. (Fixation of Cadre Strength) Regulations, 1955. The submission was also made that in exercise of jurisdiction under Article 226 the High Court cannot overstep limits prescribed by statute. It was contended that order of the Court trenches upon the statutory machinery which has been envisaged in the Cr.P.C. for investigation of offences. The Division bench of Bombay High Court repelled the submission it held that the order of the High Court does not supplant the provisions of Cr.P.C. or disabled the machinery of investigation that has been designed under the Code. The Division Bench in paragraph 27 observed:

"27. Good governance in a civil society is inextricably woven with the fabric of ordered liberty. Enforcement of law, the investigation of crimes and the prosecution of offenders constitute important components of a system which is guided by the ideals of the Rule of Law. Ideals in

the distant horizon they seem to be when the conscience of a society is aroused by wrongdoing which is of a systemic nature. The evolution of a society from market control to market reform is an important milestone in development. The dominance of market forces furnishes new avenues for the generation of wealth. On the other hand, the sanctity of the economic system and its stability can be destroyed by systemic franks of the kind that contemporary economics have had to confront. Effective investigation and prosecution are the hallmarks of a legal system committed to the protection of human rights as they are of a legal regime that protects legitimate forms of economic activity. Courts must and do have a healthy respect for the demarcation of powers between the executive, the legislature and the judiciary. Equally, nothing can be as destructive of the rule of law as the lack of independence and impartiality of the investigation and prosecutorial processes. When systemic issues of the kind involved here arise before the Court, the obligation of the court as expounder of constitutional precept warrants flexible and effective remedies. The evolution of legal doctrine is not stratified in a frozen dialogue. Courts must and do respond to felt necessities of the time ensuring that in the process they do not offend the constitutional distribution of powers or statutory prohibitions. Doctrinal immutability should not stultify a democratic society in its effort to find effective measures for unheralded wrongs."

49. A Full Bench of the Madras High Court in **R. Sankarasubbu vs. The Commissioner of Police, Egmore,**

Chennai, 2013 (1) CTC 1, appointed one Mr. R.K. Raghavan, former Director of CBI. In this context in paragraph 76(i) following has been stated:

“76.(i) We hereby appoint Mr. R.K. Raghavan, former Director of Central Bureau of Investigation, as Investigating Officer of Special Investigation Team(SIT), to be assisted by Dr. M. Narayana Reddy, former Professor and Head of the Department of Forensic Medicine, Osmania University, Hyderabad, Andhra Pradesh to investigate this case.”

50. This Court in **Advocates Association, Bangalore vs. Union of India and others, (2013) 10 SCC 611**, has noticed that the High Court of Karnataka has constituted SIT which was headed by a retired Director of CBI. Paragraph 7 of the judgment is as follows:

“7. The High Court, by order dated 16-5-2012¹, constituted a Special Investigation Team (SIT) headed by Dr R.K. Raghavan, a retired Director of CBI as Chairman and Mr R.K. Dutta, Director General of Police, CID, Bangalore as Convenor along with other police officials to investigate into the incident with reference to the complaints lodged by the police, advocates as well as media against each other and to conclude the same within 3 months from the date of the government notification. In pursuance of the same, the State Government issued a series of notifications constituting and reconstituting SIT for reasons of non-

availability of officers to be its members."

51. Although this Court ultimately entrusted the investigation to CBI but the fact we notice that the High Court had appointed SIT which was headed by retired CBI Director General. Recently this Court in **SUNITA DEVI AND ANOTHER VS. UNION OF INDIA AND OTHERS, (2018) 3 SCC 664**, has appointed a SIT to investigate a case of murder where one Shri Shri M.L. Sharma, IPS (retired), former Special Director, CBI, was appointed as Chairman of the SIT. In paragraph 10 following was directed:

"10. Having examined the entire materials placed on record, we deem it proper to constitute a Special Investigating Team (SIT) to reinvestigate FIR No. 221 of 2001 titled "*State v. Manvir Singh*" registered at Police Station Pilakhua, District Ghaziabad, U.P. Shri M.L. Sharma, IPS (retired), former Special Director, CBI, is appointed as the Chairman of the SIT. Shri M.L. Sharma is permitted to take assistance of two officers of his choice of CBI as its members. We direct the SIT to proceed as regards further investigation in respect of FIR No. 221 of 2001 and to submit its report within a period of three months from today. Needless to say that appropriate secretarial assistance and logistic support shall be made available to the SIT by the

Government of Uttar Pradesh. The Government of Uttar Pradesh is also directed to provide to the Chairman and the members of the SIT all travelling, boarding and lodging expenses while discharging their responsibility entrusted to them."

52. Learned counsel for the appellants relied on a judgment of this Court in **Board of Control for Cricket in India vs. Cricket Association of Bihar and others, 2014 (7) SCC 385**, where suggestion to include Mr. M.L. Sharma, retired IPS was not accepted. In his place one Mr. B.B. Mishra, IPS of the 1983 Batch was included.

53. The judgments as noted above indicate that the High Courts and this Court in their several judgments have included retired Police Officers to be part of SIT or to head a SIT. Learned Attorney General has submitted that these are those cases where the appointment of retired officers was made but the Court had no occasion to consider the legality of such appointment in exercise of jurisdiction under Article 226 or Article 32. We having noticed the expansive nature of jurisdiction under Article 226 and the exposition of law of this Court extracted

above, the jurisdiction of constitutional courts under Article 226 and Article 32 can be used to forge new methodology to achieve the constitutional objectives. No fetter can be read in the jurisdiction under Article 32 or 226 as contended by the learned Attorney General. For sufficient reason investigation can be handed over to a person who is retired or no longer in employment. The functions which are to be performed by that person is under authority of Court's order. There may be varied situations and circumstances where a former officer is entrusted with an investigation or any other function to achieve an object or purpose. When the constitutional courts direct particular officer to carry on specific job that order cannot be treated to be put that person in office of that post with all necessary consequences. The particular object is entrusted or only a specific job is entrusted to the officer which he has to carry. The Court in issuing such direction neither creates any ex-cadre post nor affects the post of officer by giving any kind of appointment to a post. The violation of All India Services Act, 1951 or Rules framed thereunder cannot be read in

entrustment of specific job to a retired officer. Learned Attorney General has submitted that in view of subsequent Government Order dated 09.12.2002 which has been placed before us now re-employment of Government servants beyond the age of superannuation of 60 years is not permissible. He has also referred to the All India (Death-cum-Retirement Benefits) Rules, 1958 where under Rule 16(1)A there is provision of giving extension in service to the incumbents of the posts of the Cabinet Secretary, Defence Secretary, Home Secretary, Director, Intelligence Bureau, Secretary, Research and Analysis Wing and Director, Central Bureau of Investigation for such period as it may deem proper. There cannot be any quarrel to the above provision nor applicability of the above provision in facts of the present case. Present is not a case where Government has decided to extend the services of respondent No.2. It is relevant to note that the High Court issued direction in paragraph 45(1) appointing respondent No.2 as a Special Officer to head Idol Wing-CID, Chennai to deal with the cases of theft of Idols and antiques in all stages, for a period of one

year, after his superannuation w.e.f. 30.11.2018. The Court further directed "the Government to pass orders to that effect". The Court clearly intended that in the above regard Government may pass appropriate orders. It is open for the Government to issue orders enabling respondent No.2 to carry on functions as per the direction. Learned Attorney has taken exception to direction No.3 by which is directed that respondent No.2 shall draw the same pay and benefits that were available to him at the time of his retirement as Special Officer. On objection being raised to the said direction, learned counsel for respondent No.2 has fairly submitted before us that respondent No.2 is ready to carry on and discharge his duties as per orders of this Court without drawing any pay and benefits as directed by the High Court. We are of the view that the High Court instead of issuing direction No.3 ought to have given option to the State Government either to continue/re-employ respondent No.2 or in alternative fix some honorarium for the duties entrusted on respondent No.2. The State Government having not passed any order in consequence of which respondent No.2 may continue in

the office of Inspector General of Police, justice would be served when the State Government is directed to pay some honorarium during the period respondent No.2 performed his duties under the order of the Court in addition to his pension. We, however, make it clear that any pay and benefits which have already been extended to respondent No.2 shall neither be recovered nor adjusted.

54. We, thus, conclude that the High Court in exercise of jurisdiction under Article 226 can very well direct respondent No.2 to head the Special Investigation Team to carry out investigation and other functions after attaining the age of superannuation. We, further, hold that directions of the High Court dated 30.11.2018 to continue respondent No.2 in Idol Wing of CID after his superannuation is sustainable.

55. Learned Attorney General as well as Shri Mukul Rohtagi further submitted that there are allegations against respondent No.2, several complaints were filed and it cannot be said that the respondent No.2

is the competent officer to continue as head of the Idol Wing. It is submitted that respondent No.2 in the writ petition has filed affidavit on 27.11.2018 with regard to which there was no opportunity given to the appellant to file reply. Alongwith affidavit dated 27.11.2018 several self-serving documents were brought on record by respondent No.2 which were relied by the High Court. It is, further, submitted that alongwith I.A.No.180358 of 2018 as well as I.A.No.30023 of 2019 details of various complaints were brought on record before this Court. On the basis of which it is clear that respondent No.2 cannot claim to be an officer with clean records and officer having no complaints.

56. Learned counsel appearing for the PIL refuting the above submission submitted that before the High Court no grievance was raised against respondent No.2 regarding his competence or complaints against him, it is only after the orders have been passed by the High Court on 30.11.2018 that certain complaints were obtained against respondent No.2 which are sought to be filed along with I.A.No.30023 of 2019. It is

submitted that complaints which have been brought on record are complaints which were obtained in the third and fourth week of December, 2018. The High Court in the impugned judgment before issuing a direction to continue respondent No.2 in the Idol Wing has thoroughly examined the credential of respondent No.2. The High Court in paragraph 34 of the judgment has noticed the statement of learned Additional Advocate General that there are no allegations against respondent No.2 except that he has not submitted the report to Additional Director General of Police. Following observation was made by the High Court in paragraph 34:

"34. Even earlier, during the earliest of hearings, when it was mentioned before this Court about such conduct of the Police Department, the learned Additional Advocate General fairly submitted that the only blemish on the part of the officer is that he has not submitted the reports to the Additional Director General of Police and that apart there are no allegations against him."

57. The reasons for directing respondent No.2 to continue have been set out by the High Court in paragraph Nos. 35 to 41. The High Court has taken

note of the fact that the Government order dated 01.08.2018 transferring the cases to CBI having been quashed, it has become just and necessary for the Court as the custodian of the Idols, in the role of parens patriae to exercise its jurisdiction to formulate a solution. Following has been stated in paragraph 35:

"35. Now, considering that the Government order has been quashed and that the State is not inclined to continue the cases, the CBI has categorically refused to take up the cases and expressed its intention to assist the existing team; that the Central Government has so far remained silent, an extraordinary situation has arisen, by which, a vacuum has been created and this Court has to take a timely decision to protect the idols and treasures of the temples. Hence it has become just and necessary for this Court as the custodian of the Idols, in the role of parens patriae to exercise its jurisdiction to formulate a solution to bring about a continuity in the investigation and to safe guard the idols, which are valuable properties of this country. It has come to the knowledge of this Court that Mr.A.G.Pon Manickavel, I.P.S in the rank of Inspector General of Police is attaining superannuation in the forenoon of 30.11.2018. The credibility of the officer is evident from the fact he has been fair and impartial in his actions. This Court is also satisfied with the procedure followed by him in securing the accused. It was also brought to the knowledge of this Court, that even

recently, more than 250 idols were unearthed by him based on the information received from credible sources. Some idols were also recovered during transit. He has been able to keep the informants intact and show tremendous progress."

58. In paragraph 36 the Court has noticed the details of the work accomplished by Idol Wing and the Idols recovered by the SIT headed by respondent No.2. In paragraph 40 of the judgment, the High Court also noticed the Performance Appraisal Report of respondent No.2 and it noticed that respondent was assessed by 28 officers and he has been given excellent grading by 27 officers, except one officer who made adverse remarks which had been set aside by the Central Administrative Tribunal. We, thus, are of the view that the High Court had after due examination of all relevant documents taken a decision to continue respondent No.2 to head the Idol Wing. The High Court has referred to various judgments of the High Court and this Court where work and conduct of respondent No.2 was appreciated which observations were extracted by the High Court in support of its conclusion.

59. The statement of Additional Advocate General noted by the High Court in paragraph 34 clearly indicates that before the High Court there were no allegations against respondent No.2 as to come to the conclusion that he was not a fit person to be directed to continue in the Idol Wing. The complaints which have been now referred to and relied by the appellant are the complaints which have been submitted after the judgment of the High Court. Alongwith I.A.No.10291 of 2018 the petitioners have referred to certain complaints in paragraph 6 in tabular chart. The said chart indicates that complaints are of 17, 18 and 26 December, of 2018. They are the complaints which were submitted even after the filing of the SLP in this Court. We are not required to enter into correctness or otherwise of the allegations in the complaints. The High Court in its direction has observed that if there are materials against respondent No.2 the same can be placed before the High Court for further direction. On the strength of the complaints which are subsequently submitted after the judgment of the High

Court, we are not persuaded to accept the submission of the appellant that respondent No.2 was not a fit person to be allowed to head the Idol Wing after 30.11.2018. In so far as submission of learned counsel for the appellant that after filing of the affidavit on 27.11.2018 by the respondent No.2 no opportunity was given to the appellant, it is useful to extract paragraph 34 of the judgment where High Court observes "As an affidavit was filed on 27.11.2018, again a direction in similar lines was issued by us on 27.11.2018 to place any materials if available before this Court. However, till date no such materials have been placed before us." We, thus, are of the view that the High Court had given opportunity to place the materials, if any. We, thus, are of the view that the High Court did not commit any error in directing respondent No.2 to continue to head the Idol Wing after his superannuation on 30.11.2018.

Issue No.5

60. Now we come to the 10 directions issued by the High Court in paragraph 45 of the judgement which

have been assailed by the learned Attorney General on the ground that each and every direction is contrary to law. We will take up each direction separately:

(1) By direction No.1, respondent No.2 was directed to function as Special Officer to head Idol Wing-CID, Chennai on his superannuation on 30.11.2018. The Government was directed to pass orders to that effect. We have already while considering Issue Nos.3 and 4 held that respondent No.2 could have been directed to work as a Special Officer to head Idol Wing-CID, hence, we do not find any error in direction No.1.

(2) With regard to direction No.2, Special Team was already constituted by the earlier order of the High Court dated 21.07.2017 which was directed to be continued to which direction no exception can be taken.

(3) With regard to direction No.3, it was directed to respondent No.2 to draw the same pay and benefits that were available to him

at the time of his retirement for the entire tenure of his term as Special Officer. We are of the view that instead of such direction, the High Court ought to have given an option to the State Government either to pass an order for re-employment/re-engagement or the liberty ought to have been given to State to fix some honorarium in addition to pension which would have been drawn by respondent No.2. During the course of hearing learned counsel for respondent No.2 has submitted that respondent No.2 is ready to carry on his duty as entrusted by the High Court even without receiving any emoluments. We are of the view that in the facts and circumstances of the case, direction No.3 deserves to be modified to the effect that the State shall fix a honorarium to be paid to respondent No.2 in addition to pension to be drawn by him. We further observe that in the event any amount has already been paid to respondent No.2 in pursuance to the direction of the

High Court, the same shall not be recovered and adjusted.

- (4) By direction No.4 the High Court directed the Special Officer to investigate the cases thoroughly and submit all the reports before the Court in a sealed cover to enable the Court to monitor the investigation. We have noticed that an Additional Director General of Police was appointed to head the Idol Wing by order dated 29.11.2018, it was not necessary for the High Court to burden itself with scrutinising each and every report and requiring each and every report to be submitted before the Court. There being a higher Officer posted in the Idol Wing, progress and result of the investigation ought to have been reported to Additional Director General of Police and the report in the High Court was necessary when certain directions were required by the Special Officer. We modify direction No.4 to the effect that report of progress of the

investigation shall be submitted to the Additional Director General of Police of Idol Wing and report to the High Court may be submitted by the Special Officer only when any further directions are required from the High Court.

- (5) With regard to direction No.5, by this direction the Special Officer is directed to continue to not only investigate and file charge sheets and prosecute in the pending cases but also to continue to do so in the cases arising in future during his tenure. No exception can be taken.
- (6) The direction No.6 which requires CBI and other agencies of Central Government shall continue to give appropriate support to the Special Officer. No exception can be taken since CBI itself sent letter dated 19.09.2018 communicating its support.
- (7) With regard to direction 7 serious objection has been raised by the learned Attorney

General. He submits that the said direction gives exemption to respondent No.2. The respondent No.2 cannot be held above law. We are of the view that no one including respondent No.2 is above the law. The High Court has given liberty to the State or any competent authority to place the materials before the Court for further direction if there are any materials against respondent No.2. The liberty given in direction No.7 amply protects the interest of the State which needs no interference.

(8) Direction No.8 pertains to communications to concerned Departments to extend co-operation to the Special Team with which no exception can be taken.

(9) With regard to direction No.9, learned Attorney General submits that the High Court ought not to have given any direction with regard to financial aspects. He submits that there is a procedure for allocation of

finances for which passing of budget is required. It is to be noted that Idol Wing has been created by the State in 1983 and for several decades Idol Wing has been continuing without provision of any separate division to handle the financial aspects. We are of the view that there was no such requirement to issue any direction to create such division to handle the financial aspects. The Idol Wing has to be run as per budget allocation and in any case of requirement it is always open to the higher Police authorities and State Government to do the needful. Direction No.9, thus, is to be deleted.

(10) Direction No.10 is general direction to which no exception can be taken.

Issue No.5 is decided accordingly.

Issue No.6

61. The High Court while delivering judgment on 30.11.2018 noticed the order dated 29.11.2018 which

was brought into the notice of the Court by respondent No.2 with regard to which observation has been made by the High Court in paragraphs 47 ad 48 of the judgment. In paragraphs 47 and 48 following has been observed:

"47. When we are about to pronounce this order, the petitioner in WP.No.20392 of 2018 produced a copy of the proceedings issued by the Government of Tamil Nadu in Police Note No.SC/19/2018 dated 29.11.2018 indicating that one Thiru.Abhay Kumar Singh, IPS, Additional Director General of Police/Chief Vigilance Officer, Tamil Nadu Newsprint and Papers Limited, Karur has been transferred and posted as Additional Director General of Police, Idol Wing, CID, Chennai by upgrading the post of Inspector General of Police, Idol Wing CID.

48. We are of the view that the State all along, is not inclined to continue with the investigation of idol theft cases as the same were transferred to CBI despite pendency of the stay order of this Court. It is also pertinent to note that after the orders were reserved, they have upgraded the post of the Additional Director General of Police and appointed an officer, by order dated 29.11.2018, which action is inappropriate and it would amply prove the transfer of cases in a most hurried manner within a single day i.e., on 01.08.2018. Similarly, the manner in which the present order dated 29.11.2018 has been passed, will speak for itself. Hence, notwithstanding the order dated 29.11.2018 passed by the Government, which has become redundant, Tr.A.G.Pon Manickavel shall take charge as Special Officer to head the Idol Wing as ordered by us, in order to preserve

the idols as well as recovery of the stolen idols to uphold the cultural heritage of this land.”

62. The above observation itself indicates that by the Government order dated 29.11.2018 the post of Inspector General of Police was upgraded as Additional Director General of Police who was appointed by the State Government on 29.11.2018. The order dated 29.11.2018 being not under challenge in the writ petition, it was not necessary for the High Court to make any observation in that regard. Without there being any challenge to the order dated 29.11.2018, the High Court was not right in observing that order dated 29.11.2018 has become redundant. We, thus, disapprove the observation made by the High Court in paragraphs 47 and 48 that the order dated 29.11.2018 has become redundant. Order dated 29.11.2018 was a Government order which was not challenged in the writ petition, the same shall remain effective that the Idol Wing shall be headed by the Additional Director General of Police appointed on 29.11.2018. The Idol Wing shall be headed by the Additional Director General of Police.

We, however, observe that Special Officer shall take all appropriate steps along with his Team and he shall submit report to the Additional Director General of the result of the investigations so that appropriate further action be taken. Issue No.6 is, thus, answered accordingly.

63. Before we close, we need to clarify one aspect and notice one necessary caution with regard to what has been said above, i.e.,

(i) Insofar as filing of the statutory reports as per the procedure prescribed in the Code of Criminal Procedure, necessary reports have to be filed by the officer authorized as per Code of Criminal Procedure.

(ii) There might arise exceptional cases where the direction for appointment of retired officers may be unavoidable to achieve the goal of justice but the High Court may resort to the power under Article 226 only after weighing all pros and cons and after

exhausting all options and as a matter of last resort. Taking services of a retired police officer or any other retired personnel is not to be normally resorted to since in the State concerned, there is always no dearth of competent and able officers, hence whenever the Court finds it necessary to take assistance of services of the retired officers or personnel, it should be with necessary caution and resorted to only when there are very valid and unavoidable circumstances.

64. In view of the foregoing discussions, the appeals are partly allowed. The judgment of the High Court is modified to the following extent:-

- (1) The direction No.9 issued in paragraph 45 of the judgment of the High Court is deleted and directions Nos.3 and 4 are modified as indicated in paragraphs 60(3) and 60(4) of this judgment.
- (2) The order of the High Court in paragraph 48 that the Government order dated 29.11.2018

has become redundant is set aside.

65. Parties shall bear their own costs.

.....J.
(ASHOK BHUSHAN)

.....J.
(K.M. JOSEPH)

New Delhi,
APRIL 12, 2019.