(2011) 07 MP CK 0065

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3332 of 2010 (PIL) .

Dharmvir Singh and Another APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 3
Banking Regulation Act, 1949 — Section 5
Companies Act, 1956 — Section 58A, 642
Constitution of India, 1950 — Article 21, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 144
Industrial Development Bank of India Act, 1964 — Section 6A
Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrankshan Adhiniyam, 2000 — Section 2, 3(1)
Penal Code, 1860 (IPC) — Section 420
Prize Chits and Money Circulation Schemes Banning Act, 1978 — Section 4, 5, 6
Reserve Bank of India Act, 1934 — Section 45, 45(1), 45A, 45B

Citation : (2011) 3 JLJ 95

Hon'ble Judges : Sheel Nagu, J;S.K. Gangele, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Gangele, J.—Petitioners, who are citizens of Gwalior city, have filed this Public Interest Litigation mentioning the facts that thousands of residents of the district have been fraudulently cheated by various companies and their hard earned money has been misappropriated. The companies have been growing rapidly in the district and they have been receiving deposits from the citizens of the area in the name of various schemes. However, the real purpose of the Companies is to receive deposits from the citizens and they promised the persons to give them higher return of interest from 15 % to 20 %. In order to carry out the afore said activities the companies have adopted various fictitious methods in the name of selling and purchasing of cattle, selling and purchasing of plots and selling and purchasing of other goods. However, in the books of the companies fictitious entries have been made and in the name of sale and purchase by way of sham transactions and the companies have been receiving deposits from the citizens with a promise to give regular interest or returns on the deposits. In doing so the companies have not taken any permission from the Reserve Bank of India and also no registration is made under the provisions of the Companies Act and the Banking Regulation Act, 1949 and also the provisions of the Madhya Pradesh Nikshepakon Ka Hiton Ka Sanrakshan Adhiniyam 2000, hereafter referred to as the ''Act of 2000'' have not been complied with. This Court vide order dated 17.03.2011 issued certain directions and directed the State authorities to file specific affidavit that what action has been taken by them in this regard.

2. District Magistrate, Gwalior, vide order dated 4th May 2011 passed orders u/s 144 Cr. P.C. In the aforesaid order the District Magistrate has mentioned that he had received complaints from various investors against the companies and directed the related concerned police stations to conduct investigation in the matter. The Deputy Secretary (Finance) vide letter dated 12.11.2009 also directed to take action against the companies, who have been in the business of collection of money. The Collector further observed that in accordance the investigation report received from police department it has been found that the non-banking finance companies working in the Gwalior district have not been registered with the Reserve Bank of India. The companies have also not informed the Competent Authority under the provisions of the Act of 2000 about their initiation of business. The companies have also not submitted any application for registration before the Reserve Bank of India nor the aforesaid companies have sufficient amount to return the deposits of the investors. Thereafter, the District Magistrate further observed that he is satisfied that the companies have played fraud with the public and they would not be able to return the money which have been collected by them fraudulently from the public and there would be a law and order problem in the area. He further mentioned that it is necessary to take action against the aforesaid companies and ordered to seal the premises of the companies and also ordered that the following companies be prohibited from working in the district:

Sr. No.

Address of the Company

Police Station

Circle

1.

27, Mayur Market, Thatipur.

Morar

Morar

2.

Pramila Plaza, Thatipur, Gwalior.

Morar

Morar

3.

Garima Kalyan Tower, Near Basant Talkies, Thatipur.

Morar

Morar

4.

Midland Plaza, Jhanwar Estate,

Morar

Morar

5.

Shivalaya, Sudamapury, M.H. Square, Morar.

Morar

Morar

6.

22, Bhagwan Colony, Thatipur.

Morar

Morar

7.

Ganga Complex, Mal Road, Morar.

Morar

Morar.

8.

University Road, Gwalior.

VishwaVidyalay a

Morar

9.

University Road, Gwalior.

VishwaVidyalay a

Morar

10.

Ganesh Plaza, Gole Ka Madir

Gole Ka Mandir

Morar

11.

41, ManikVilaslColony, Near Landmark. Gwalior.

VishwaVidyalay a

Morar

12.

Fortune Plaza, Ciity Centre, Main Road.

VishwaVidyalay a

Morar

13.

11, IDC Plaza, City Centre

VishwaVidyalay a

Morar

14.

50, Manik Vilas Coloney.

VishwaVidyalay a

Morar

15.

Abhaya Plaza Complex, Ground Floor, ShardaVihar, City Centre.

VishwaVidyalay a

Morar

16.

104, Jiwandeep Apartment.

Gole Ka Mandir

Morar

17.

4-A, GurukrupaBhawan, Rameshwar Colony, AGMP Road, Gwalior.

Jhansi Road

Jhansi Road.

18.

Infront of Gurudwara, Phoolbagh

Indergan j

Jhansi Road

19.

Infront of Bharat Talkies, ShindeKiChhawai, Gwalior

Indergan j

Jhansi Road

20.

Rajeev Plaza, Jayendraganj, Gwalior.

Indergan j

Jhansi Road

21.

Pay-In Plaza, ShindeKiChhawai

Indergan j

Jhansi Road

22.

First Floor, Rama Tower, Shinde KiChhawai

Indergan j

Jhansi Road

23.

3, Manik Vilas Colony, behind Hotel Landmak.

Jhansi Road.

Jhasni Road.

24.

Gudiguda Ka Naka, Lashkar.

Kampoo

Jhansi Road.

25.

Lalitpur Colony

Kampoo

Jhansi Road.

26.

JinsiNala No. 3, Infront of Janak Hospital, Laska.

Kotwali

Lashka r

27.

Usha Colony Dabra, office at Padav.

Padav

Gwalio r

28.

Jagannath Chamber, Hotel Saya.

Padav,

Gwalio r

30.

ShivajiTowar, Phoolbag

Padav

Gwalio r

31.

Shriram Market, Hakur Baba, Dabra

Dabra

Dabra

32.

50 Manik Vilas Colony

Jhansi Road

Jhansi Road

33.

50 Manik Vilas Colony

Jhansi Road

Jhansi Road

34.

22-A, Bhagwan Colony, R.K. Puri,Thatipur.

Morar / Thaipur

Morar

3. Thereafter, the Collector also seized various properties of the aforesaid Companies vide order dated 15.06.2011, 28.05.2011, 03.06.2011, 23.06.2011, 06.06.2011, 25.06.2011, and 01.06.2011. Copies of the orders have been supplied by the State in an application for furnishing information before this Court.

4. Various companies have challenged the action of the Collector in various writ petitions before this Court.

9. However, in the meanwhile, it is directed that Collector shall issue an advertisement in the news paper and publish an information about Company and also mention the fact that the persons, who have deposited any amount with the Company, may submit their application before the Authority and after receiving the applications, he can depute any person to investigate the matter further to the effect that the affected persons have made deposits in the form of cash with an intention to return the money with interest.

10. After going through the record, we further observe that a further detailed investigation is required in the matter. For the aforesaid purpose, the Company may also be provided the photocopies of the documents, which have been seized by the Authority, so that, it can also submit a proper representation and reply to the Investigating Authority."

5. By the aforesaid order the Court directed the Collector to issue an advertisement in the news papers and publish an information about the Companies and also mention the fact that the persons who have deposited any amount with the Company may submit their applications before the Authority and thereafter a person be deputed to investigate the matter. In pursuance to this the Collector has initiated action and thereafter as per the information supplied by the Respondents Collector received near about 12357 applications from various investors. The major number of applications received by the Collector are against Pariwar Dairy & Allied Ltd., Ganesh Plaza, Gole Ka Mandir. Against this company near about 11,200 persons have submitted their applications to the Collector, details of the applications are as under:

Sr. No.

Name & Address of the Company

Police Statio n

No. of applications

Amount of policies (in Rupees)

Amount payable after maturity

1.

SamraddhiJeewan Foods India Ltd. Pramila Plaza, Thatipur, Gwalior

Morar

16

435200/

664070/

2.

Garima Real Estate& Allied, GarimaKalayanTowar, Near Basant Talkies, Thatipur

Morar

03

3.

Saksham Dairy & Allied Ltd. Midland Plaza, Jhanwa Estate,

Morar

02

50000 30000

63300

4.

Royal Son Marketing and Insurance Services,22, Bhagwan Colony, Thatipur.

Morar

01

7000

5.

SkylarkLand Developers and Infrastructure India Ltd. Ganga Complex, Mal Road, Morar

Morar

01

6600

9261

6.

JeewanSurabhi & Allied, 14 PritamVihar, University Road.

Vishw a Vidyalaya

20

519800

799500

7.

Pariwar Dairy & Allied Ltd., Ganesh ,Gole Ka Mandir.

Gole Ka Madir

11200

244704298

402055746

8.

JSV Developers India Ltd. 41 Manik Vilas Colony, Near Landmak, Gwalior.

Vishw a vidyalaya

10

289000

438000

9.

KMJ Land Developers India Ltd.

Vishw a Vidyalaya

12

398500

523000

10.

Son India Real Estate, 11, IDC Plaza, City Centre

Vishw a Vidyalaya

135

3637100

6271150

11.

BPN Real Estate & Allied , Abhaya Plaza Complex, Ground Floor, Sharda Vihar City Cetre.

Vishw a Vidyalaya

04

138000

207500

12.

Anmol Sahara Marketing India Ltd 4-A, GurukrupaBhawan, Rameshwar Colony, AGMP Road, Gwlior

Jhasi Road

16

330000

518000

13.

KBCL Pvt Ltd. Infront of Gurudwara, Phoolbag

Inderganj

03

90000

132000

14.

Kim Future Vision, (Kim Infrastructure & Developers Ltd.) Rajiv Plaza, Jayendraganj, Gwalior.

Inderganj

122

3593523

4703350

15.

PACL India Ltd. Pay-In Plaza, ShindeKiChhawai.

Inderganj

662

18592421

30819769

16.

MKD Land Developers India Ltd., First Floor, Rama Tower, ShindeKiChhawai

Inderganj

20

563000

977600

17.

Kamal India Real Estate & Allied Latd. 3, Manik Vilas Colony, Behind Hotel Landmak.

Jhansi Road

01

60000

18.

RBN Ltd. Lalitpur Colony, Lalitpur Colony

Kamp u

11

142800

397570

19.

Sai Prasad Foods India Ltd., JinsiNala No. 3, Infront of Janak Hospital, Lashkar.

Kotwali

54

1174320

1754250

20.

Sai Prasad Property Ltd., JinsiNalao. 3,Huzrat Pul

Kotwali

24

1125000

2434585

21.

GCA Marketing Ltd., Jagannath Chamber, Hotel Saya.

Padav

38

553600

828750

22.

SimphonyPharma & Forest Pvt. Ltd., 20, Vatsalya Chamber, Second Floor, 31 SnehNagar, Indore.

01

23.

BNP Real Estate

01

60000

100000

Total

12357

276500162

453807701

6. As per the afore quoted details all the investors have claimed that the companies received Rs. 27,65,00,162/-and they have promised to pay on maturity an amount of Rs. 45,38,07,701/-. The applicants have submitted that they have made deposits and received certificates from the companies mentioning the date of acceptance of amount and date of maturity. The Companies have been receiving monthly amount as a recurring deposits also. The details have been supplied by the State in the application.

7. Thereafter, the police has registered criminal cases against the Directors of the

Companies under Sections 420 IPC and Sections 4, 5 and 6 of the Prize Chits & Money Circulation Scheme (Banning) Act, 1978 and Section 45(1) of the Reserve Bank of India Act 1934 and Section 3(1) of the Act of 2000. As per the report submitted by the District Administration the following criminal cases have been registered against the Board of Directors and Officers of the companies at various police stations:

S. No.

Name of applicants.

PIL No.

Crime No.

Police Station.

1.

Anmol Sahara

3332/10

224/11

Jhansi Road, Gwalior.

2.

H.V.N. Dairy

3332/10

60/11

Inderganj, Gwalior

3.

Sukhdev Singh and Ors..

3332/10

256/11

Inderganj, Gwalior

4.

Dilip Jain and Ors.

3332/10

268/11

Morar, Gwalior.

5.

Ajay Ku. Mishra and Ors..

3332/10

161/11

University, Gwalior.

6.

ShivramVerma and others.

3332/10

153/11

University Gwalior.

7.

Vijay LaxmiKuthait and Ors.

3332/10

152/11

University, Gwalior

8.

Sun India Real State and Ors.

3332/10

155/11

University, Gwalior.

9.

Gurdeep Singh and Ors.

3332/10

279/11

Padav, Gwalior.

10.

S.L. Rathore and Ors.

3332/10

154/11

University, Gwalior.

11.

Rakesh Singh Narwariya

3332/10

255/11

Gola Ka Madir, Gwalior,

12.

Ajay Singh and Ors.

3332/10

254/11

Inderganj, Gwalior.

13.

Dinesh Singh and Ors.

3332/10

255/11

Indergaj, Gwalior.

14.

M/s Garima Real Estate.

3332/10

308/11

PS Thatipur,

15.

M/s SamidhJeewan Food Ltd.

3332/10

309/11

PS Thatipur

8. During the course of arguments learned Additional Advocate General informed the Court that after investigation it has been found that these companies have also been operating in various districts of the State and also out side the State. For example one company, PACL (India) Ltd. has been operating in all over the country and as per the news report published in ''The Economic Times'' dated 28.06.2011, copy of which has been filed along with the application, the Company holds deposit of Rs. 20,000 crore and it has been operating in all over

the country. Similarly, M/s Pariwar Dairy & Allied Ltd. has also been operating in other districts of the State and even there is no mention to the effect that it may be operating out side the State also. Another company M/s KMJ Land Developers (India) Ltd. has been operating in near about 200 districts. The learned Additional Advocate General further submitted that it is not possible for the District Administration to verify the fact that these companies have been operating in how many districts. However, from the documents filed by the Administration and after perusal of the case diary of the criminal cases, registered against the companies, we are primarily satisfied that the companies have been receiving deposits from the investors and in order to bypass various mandatory provisions of law, they have adopted means and are involved in some table work to show that they are in the business of sale and purchase of cattle, sale and purchase of land or sale and purchase of other materials. In all these writ petitions filed by the companies against the orders of the Collector, they have denied the fact that they are receiving deposits from the investors, however, the number of complaints in only Gwalior district is near about 12000 and as per the submissions of learned Additional Advocate General the District Administration has been receiving about 300 complaints per day and the magnitude of the problem is enormous and the Companies have stated that they have deposited the money on the promise that they would be paid high interest or return.

9. After perusal of the complaints and the certificates issued by the companies, it is clear that primarily the companies have received deposits with a promise to pay high return on maturity. Looking to the magnitude of the problem, this Court suggested that the matter may be referred for investigation by Central Bureau of Investigation because in Gwalior district alone the amount as per the complaints received by the Collector is near about Rs. 30 crore. It may be 100 crore or more than that because the District Administration has no information that how many persons have deposited the amount. Looking to the activities of the companies in various districts and even though out side of the State, it may be a tip of an iceberg. The leaned Additional Advocate General has also not opposed the prayer that matter may be referred for preliminary investigation to the Central Bureau of Investigation looking to the magnitude of the problem and the complexity of the issue.

10. Section 58-A of the Companies Act, 1956 prescribes that deposits not to be invited by the companies without issuing an advertisement. The provisions are as under:

58.A Deposits no to be invited without issuing an advertisement.-(1) The Central Government may, in consultation with the Reserve Bank of India, prescribe the limits up to which, the manner in which and the conditions subject to which deposits may be invited or accepted by a company either from the public or from the members.

(2) No company shall invite, or allow any other person to invite or cause to be

invited on its behalf, any deposit unless -(a) such deposit is invited or is caused to be invited in accordance with the rules made under Sub-section (1), and (b) a advertisement, including therein a statement showing the financial position of the company, has been issued by the company in such form and in such manner as may be prescribed.

(3) (a) Every deposit accepted by a company at any time before the commencement of the Companies (Amendment) Act 1974, in accordance with the directions made by the Reserve Bank of India under Chapter IIIB of the Reserve Bank of India Act, 1934 (2 of1934), shall, unless renewed in accordance with Clause (b), be repaid in accordance with terms of such deposit.

(b) No deposit referred to in Clause (a) shall be renewed by the company after the expiry of the term thereof unless the deposit is such that it could have been accepted if the rules made under Sub-section (1) were in force at the time when the deposit was initially accepted by the company.

(c) Where, before the commencement of the Companies (Amendment) Act, 1974, any deposit was received by a company in contravention of any direction made under Chapter IIIB of the Reserve Bank of India Act, 1934 (2 of 1934), repayment of such deposit shall be made in full on or before the 1stday of April 1975, and such repayment shall be without prejudice to any action that may be taken under the Reserve Bank of India Act, 1934 for the acceptance of such deposit in contravention of such direction.

4. Where any deposit is accepted by a company after the commencement of the Companies (Amendment) Act, 1974, in contravention of the rules made under Sub-section (1), repayment of such deposit shall be made by the company within thirty days from the date of acceptance of such deposit or within such further time, not exceeding thirty days, as the Central government may, on sufficient cause being shown by the company, allow.

11. The Appropriate Government in exercise of powers conferred u/s 58-A read with Section 642 of the Companies Act, 1956 with consultation of Reserve Bank of India made rules named as "Companies (Acceptance of Deposits) Rules 1975. No company can accept any deposits from any person without following the provisions of the aforesaid Rules.

12. State of Madhya Pradesh has also enacted an Act named as "The Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000", hereinafter referred to as the ''Act of 2000''. This Act also prescribes certain provisions in regard to acceptance of deposits by the Companies. The definition of the word ''Deposit'' has been given in Section 2 (b) of the Act of 2000, which is as under:

(b) "Deposit" includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any financial establishment to be returned after a specified period or otherwise, either in cash or any kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or any other form, but does not include, (i) amounts contributed as capital by the parters of a firm;

(ii) amounts received from a scheduled bank or a cooperative bank or any other banking company as defined in Clause (c) of Section 5 of the Baking Regulation Act, 1949 (10 of 1949);

(iii) any amount received from -

(a) the Industrial Development Bank of India (IDBI),

(b) a State Financial Corporation,

(c) any financial institution specified in or u/s 6-A of the Industrial Development Bank of India Act, 1964 (18 of 1964); or

(d) any other institution that may be specified by the Government in this behalf.

13. Section 45 of the Reserve Bank of India Act, 1934 prescribes provisions in regard to character and furnishing of credit information. The provision of Section 45-A and 45-B are as under:

45-A. Definitions .-In this Chapter, unless the context otherwise requires .-(a) "banking company" means a banking company as defined in Section 5 of the "Banking Regulation Act, 1949 and includes the State Bank of India [any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, any corresponding new bank constituted by Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and any other financial institution notified by the Central Government in this behalf.]

(b) "borrower" means any person to whom any credit limit has been sanctioned by any banking company, whether availed of or not, and includes -

(i) in the case of a company or corporation, its subsidiaries;

(ii) in the case of a Hindu undivided family, any member thereof or any firm in which such member is a partner;

(iii) in the case of a firm, any partner thereof or any other firm in which such partner is a partner, and (iv) in the case of an individual, any firm in which such individual is a partner,

(c) "credit information" means any information relating to -

(I) the amounts and the nature of loans or advances and other credit facilities granted by a banking company to any borrower or class of borrowers;

(ii) the nature of security taken from any borrower [or class of borrowers] for credit facilities [granted to him or to such class]

(iii) the guarantee furnished by a banking company for any of its customers [or any class of its customers]

(iv) the means, antecedents, history of financial transactions and the credit worthiness of any borrower or class of borrower;

(v) any other information which the Bank may consider to be relevant for the more orderly regulation of credit or credit policy.

"45-B. Power of Bank to collect credit information .-The Bank may -

(a) Collect, in such manner as it may think fit, credit information from banking companies; and

(b) furnish such information to any banking company in accordance with the provisions of Section 45-A.

14. From the aforesaid provisions it is clear that there is an obligation on the part of the Financial Company to submit information to the Reserve Bank of India. In all the cases the companies have not complied with the aforesaid provisions which is clear from the report received by the Collector and perusal of the case diaries of various criminal cases registered against the companies.

15. The Constitution Bench of the Hon''ble Supreme Court in the case of State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, , has held as under, in regard to the powers of the High Court for issuance of a direction in regard to investigation by Central Bureau of Investigation to investigate a cognizable offence:

68. Thus, having examined the rival contentions in the context of the Constitutional Scheme, we conclude as follows:

(i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any Constitutional or Statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said Article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the Constitutional Courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover, in a federal Constitution, the distribution of legislative powers between the Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than the Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between the Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of "the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review".

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that Courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure.

(v) Restriction on the Parliament by the Constitution and restriction on the Executive by the Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Articles 32 and 226 of the Constitution.

(vi) If in terms of Entry 2 of List II of The Seventh Schedule on the one hand and Entry 2A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the Statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the court fails to grant relief, it would be failing in its constitutional duty.

(vii) When the Special Police Act itself provides that subject to the consent by the State, the CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State Police, the court can also exercise its constitutional power of judicial review and direct the CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the Constitutional Courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.

69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

71. In Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Ors. v. Sahngoo Ram Arya and Anr.31, this Court had said that an order directing an enquiry by the CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency. We respectfully concur with these observations.

16. The Hon''ble Supreme Court further in the case of Babubhai Jamnadas Patel Vs. State of Gujarat and Others, , has held, as under, in regard to powers of the High Court of judicial review and supervision of certain class of cases to ensure that rights of the citizens are fully protected:

46. The courts, and in particular the High Courts and the Supreme court, are the sentinels of justice and have been vested with extraordinary powers of judicial review and supervision to ensure that the rights of the citizens are duly

protected. The courts have to maintain a constant vigil against the inaction of the authorities in discharging their duties and obligations in the interest of the citizens for whom they exist. This Court, as also the High Courts, have had to issue appropriate writs and directions from time to time to ensure that the authorities performed at least such duties as they were required to perform under the various statutes and orders passed by the administration.

47. As for example, in the instant case, the High Court had to repeatedly intervene and pass orders to ensure that the investigation was being conducted diligently. Periodical status reports were required in that regard. In fact, the High Court had to direct the Additional Public Prosecutor to ask the investigating officer to incorporate the details of the action taken by him from the date of receipt of the letter (sic order) dated 5.12.2008. There is little doubt that only after the High Court began monitoring the progress of the investigation that the investigating authorities began to deal with the matter with some amount of seriousness.

17. The Hon''ble Supreme Court further in the case of Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, , has held, as under, in regard to circumstances under which the High Court can direct an enquiry by the Central Bureau of Investigation:

5. While none can dispute the power of the High Court under Article 226 to direct an inquiry by the CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a need for such inquiry. It is not sufficient to have such material in the pleadings. On the contrary, there is a need for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an inquiry by the CBI. This is a requirement which is clearly deducible from the judgment of this Court in the case of Common Cause, Common Cause, A Registered Society Vs. Union of India and Others, . This Court in the said judgment at paragraph 174 of the report has held thus: (SCC p 750, para 174)

174. The other direction, namely, the direction to CBI to investigate "any other offence" is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person''s involvement is prima facie established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of "LIFE" and "LIBERTY" guaranteed to a person under Article 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of "LIFE" has been explained in a manner which has infused "LIFE" into the letters of Article 21.

6. It is seen from the above decision of this Court that the right to life under Article 21 includes the right of a person to live without being hounded by the Police or the CBI to find out whether he has committed any offence or is living as

a law-abiding citizen. Therefore, it is clear that a decision to direct an inquiry by the CBI against a person can only be done if the High Court after considering the material on record comes to a conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency, and the same cannot be done as a matter of routine or merely because a party makes some such allegations. In the instant case, we see that the High Court without coming to a definite conclusion that there is a prima facie case established to direct an inquiry has proceeded on the basis of ''ifs'' and ''buts'' and thought it appropriate that the inquiry should be made by the CBI. With respect, we think that this is not what is required by the law as laid down by this Court in the case of Common Cause (supra).

18. The Constitution Bench of the Hon''ble Supreme Court in its earlier judgment has specifically observed that the High Court has to keep in mind the directions issued by this Court in Secretary, Minor Irrigation & Rural Engineering Services,U.P. and Ors. v. Sahngoo Ram Arya and Anr. (supra) in the event of ordering investigation by Central Bureau of Investigation.

19. After considering the above principle of law laid down by the Hon''ble Supreme Court, we have to consider the facts of the case and the question that whether enquiry by the Central Bureau of Investigation can be ordered or not at all ? It is also a fact as contended by the leaned Additional Advocate General that the State has not opposed the enquiry by the Central Bureau of Investigation. Contrary to this, the learned Additional Advocate General has contended that looking to the magnitude of the issue that certain companies are operating in various States and districts, it would be proper to order for CBI enquiry because a District Magistrate or the police of various districts in the State are not in a position to conduct the investigation. We have perused the documents supplied along with the application for furnishing information and found that the companies have accepted the deposits from the investors and they have assured the depositors higher interest / return shall be paid to them and certificates have also been issued to the depositors and after order of this Court near about 12000 depositors have made complaints to the Collector that actually they have made deposits with the companies. We have also perused the newspaper report published in ''The Economic Times'' dated 28.06.2011. We are of the opinion, that the information collected by the District Administration, Gwalior is a tip of the iceberg because the District Administration is not in a position to collect the information from other centers or areas of the operation of the companies. If version of the District Administration be accepted then certainly it is a serious matter because, in our opinion, if such types of activities be permitted, it would be against the interest of national economy and banking system and rather it may collapse the banking system also. It may also harmful to the national economy. We are not making any comments the effect that whether a case is made out for registration of a particular offence against the companies, however, we are making only primary observations in order to order an enquiry by the CBI. We are also making it clear that we are not ordering to register an FIR or

registration of an offence or offences against the companies, but, we are simply issuing a direction looking to the complexity of the issue to the effect of the action that CBI shall enquire into the matter. This order would confine only in regard to the companies which have been operating out side of the State. The agency is at liberty to come out on a conclusion that whether the companies have been doing their business in accordance with law or the activities of the companies amounts to commission of offence. This would be the sole discretion of the Investigating Agency. We further observe that Investigating Agency shall not be influenced by any observation or observations made in this order or the investigation conducted by the District Administration or local police authorities, because the actions are under challenge before the Courts. We further observe that our observations be not read against any company where the matter is sub-judice before the Court. As per the news item published in ''The Economic Times'' dated 28.06.2011, the dispute is pending before Hon''ble the Supreme Court against P.A.C.L. (India) Ltd. In the aforesaid news item the news paper has reported as under:

From his office and 279 more across India, PACL runs an operation that the Securities and Exchange Board of India (Sebi) deems illegal because it considers it a collective investment scheme in the garb of a real estate company. But the final word has not been said yet about what kind of an animal PACL actually is. This dispute will be settled by the Supreme Court, where the case has laid for eight years.

20. Learned Senior Counsel, Mr. R.N. Singh, appearing on behalf of intervenor, Pariwar Dairy & Allied Ltd. has contended that it is obligatory on part of the Court to hear the Petitioners and affected persons before passing any order in regard to C.B.I. Investigation. In our opinion, the aforesaid argument could not be accepted because we have not directed the investigating agency to register any offence against any company. We have simply directed the investigating agency to submit a preliminary investigation report to this Court in order to facilitate the Court for further action in the matter. It is well settled principle of law that a person against whom an investigation is pending for required has no right of pre-hearing because he may be innocent or may be guilty. Same principle could be applied in this case also because we have not ordered registration of offence against any company. We have simply ordered investigation in the matter looking to magnitude of the problem and the complexity of issues involved in the matter. We further observe that the observations made in this order shall not be read or affect the adjudication of criminal cases which are pending before various criminal courts. We further observe that we have not expressed any opinion about the order of the Collector to issue orders u/s 144 Code of Criminal Procedure or about the merits of the order issued by the Collector. We further observe that we have not expressed any opinion about the power of the Collector in regard to seizure of the property of the companies or merits of the seizures. Because, it can only be adjudicated after hearing the affected companies or the persons in appropriate proceedings. This order shall also not affect the

investigation conducted by police administration of district Gwalior or any other district.

21. By this order looking to the magnitude of the problem and the fact that District Administration and Police Authorities have no capacity to investigate it properly, we deem it fit in the interest of justice and in the interest of thousands of citizens and in the interest of national economy that CBI be directed to conduct a primary investigation about activities of the companies mentioned in para 2 at page 3 of this order, having operation out side of the State. The investigating authority be at liberty to reach its own conclusions. A copy of this order be sent to the Director of CBI with a request to take appropriate action in the matter and inform the Court about the action taken within a period of three months.

22. Ordered accordingly.

