

Reserved on : 30.09.2024
Pronounced on : 13.11.2024



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.17274 OF 2024 (GM - RES)

BETWEEN:

UNION BANK OF INDIA
A BODY CORPORATE CONSTITUTED UNDER
THE BANKING COMPANIES
(ACQUISITION AND TRANSFER OF
UNDERTAKINGS) ACT
HAVING ITS CENTRAL OFFICE AT NO. 239
VIDHAN BHAWAN MARG, NARIMAN POINT,
MUMBAI - 400 021
MAHARASHTRA
REGIONAL OFFICE SITUATED AT
NO.10/A, CHANDRA KIRAN
FIRST FLOOR, BENGALURU - 560 001.
REPRESENTED BY ITS REGIONAL HEAD
J.MAHESHA.

... PETITIONER

(BY SRI R VENKATARAMANI, ATTORNEY GENERAL OF INDIA A/W
SRI KIRAN S.JAVALI, SR.ADVOCATE;
SMT.VIBHA DAMA MAKHIJA, SR.ADVOCATE;
SRI V.R.VINAY KUMAR, ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
REPRESENTED BY ITS CHIEF SECRETARY,
DR.AMBEDKAR VEEDHI,
BENGALURU – 560 001.
- 2 . THE DIRECTOR GENERAL AND
INSPECTOR GENERAL OF POLICE
KARNATAKA STATE POLICE,
HEADQUARTERS,
NO.2, NRUPATHUNGA ROAD,
BENGALURU – 560 001.
- 3 . THE STATION HOUSE OFFICER
HIGHGROUNDS POLICE STATION,
BENGALURU – 560 052.
- 4 . THE DIRECTOR GENERAL OF POLICE
CRIMINAL INVESTIGATION AGENCY
SPECIAL UNITS AND ECONOMIC OFFENCES
CID HEADQUARTERS
CARLTON HOUSE,
BENGALURU – 560 001.
- 5 . CENTRAL BUREAU OF INVESTIGATION
BANKING SECURITIES FRAUD BRANCH
36, BELLARY ROAD, 2ND FLOOR
CBI COMPLEX, GANGANAGAR
BENGALURU – 560 032
REPRESENTED BY ITS
JOINT DIRECTOR.
6. KARNATAKA MAHARSHI VALMIKI
SCHEDULED TRIBES DEVELOPMENT
CORPORATION LTD.,
REPRESENTED BY
A. RAJASHEKAR, GENERAL MANAGER

AT NO.10, 3RD FLOOR, KHADI BHAVAN
JASMA DEVI BHAVAN ROAD,
BENGALURU – 560 052.

... RESPONDENTS

(BY SRI B.V.ACHARYA, SPL.PP A/W
SRI V.G.BHANUPRAKASH, AAG AND
SRI THEJESH P., HCGP FOR R-1 TO R-4;
SRI P.PRASANNA KUMAR, SPL.PP FOR R-5;
PROF.RAVI VARMA KUMAR, SR.ADVOCATE FOR
SRI ADITYA BHAT, ADVOCATE FOR R-6;
SRI SUDHANVA D.S., ADVOCATE FOR I.A.NO. 1/2024
FOR IMPEADING APPLICANT)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO DIRECT THE RESPONDENT NO.1 TO 3 TO TRANSFER AND ENTRUST THE INVESTIGATION OF THE CASE CRIME NO. 118/2024 VIDE ANNEXURE – Q, LEVELING OFFENCES PUNISHABLE UNDER SECTIONS 149, 409, 420, 467, 468, 471 OF THE INDIAN PENAL CODE TO THE RESPONDENT NO.4-CENTRAL BUREAU OF INVESTIGATION AND FURTHER DIRECT THE R-4 TO CARRY OUT SPEEDY AND EXPEDITIOUS INVESTIGATION IN THE AFOREMENTIONED CASE WITHIN A SPECIFIED TIME.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 30.09.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner/Union Bank of India is knocking at the doors of this Court seeking a direction by issuance of a writ in the nature of mandamus directing respondents 1 to 3/the State and its wings to transfer and entrust the investigation in Crime No.118 of 2024 registered for offences punishable under Sections 149, 409, 420, 467, 468 and 471 of the IPC to the 5th respondent/Central Bureau of Investigation ('CBI' for short).

2. The facts, in brief, germane are as follows:-

This petition is preferred by the Union Bank of India, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The backdrop to the filing of the present petition is that the 6th respondent/Karnataka Maharshi Valmiki Scheduled Tribes Development Corporation Limited ('the Corporation' for short), a Government of Karnataka

undertaking had held its Savings Bank ('SB') account in a branch of Union Bank of India at Vasanthnagar, Bangalore. 6th respondent represented by its Managing Director and the Accounts Officer are said to have instructed the Bank to transfer the said SB account into M.G. Road Branch of the Bank. Considering the request of the 6th respondent, the petitioner/Bank is said to have transferred the SB account to M.G. Road Branch. Upon transfer, respondent No.6 is said to have subscribed signatures for banking business on the specimen signature card and has authorized the Managing Director and the Accounts officer to operate the SB account independently. Certain transactions took place. Money belonged to the Corporation is sent to various accounts, both in the State of Karnataka and in Tamilnadu. The money to the tune of ₹94,73,08,500/- was distributed to various accounts by the Branch on the basis of forged documents including authorization letter by one Shivakumar, Junior Accounts Officer of the 6th respondent. Based upon the said incident a crime comes to be registered by the State Government in Crime No.118 of 2024 for the aforesaid offences.

3. Parallely, against the officials of the Bank, the petitioner placed the matter before the CBI, as the alleged fraud involved was beyond ₹50/- crores. The CBI registers FIR in No.RC0782024E001 for offences punishable under Sections 120-B, 409, 420, 467, 468 of the IPC r/w 13(2) and 31(1)(a) of the Prevention of Corruption Act, 1988 ('PC Act' for short). Both the State Government and the CBI independently investigate. The horizon of investigation differs, as the offences under the PC Act as also under the IPC were alleged in the crime registered by the CBI, but the State Government has registered the crime for offences under the IPC. On 19-06-2024 during the subsistence of investigation at both the ends, the petitioner submits a request/representation to the Additional Chief Secretary, Home Department, Government of Karnataka referring to the complaint registered by the CBI and the complaint registered by the State and seeking reference of the entire matter to the hands of the CBI to ensure free and fair investigation. Two days thereafter i.e., on 21-06-2024 the subject petition is filed.

4. Heard Sri R. Venkataramani, learned Attorney General of India appearing for the petitioner; Sri B.V.Acharya, learned Special

Public Prosecutor appearing for respondents 1 to 4; Sri P.Prasanna Kumar, learned Special Public Prosecutor for respondent No.5 and Prof. Ravi Varma Kumar, learned senior counsel appearing for respondent No.6.

SUBMISSIONS:

Petitioner:

5. The learned senior counsel and Attorney General of India Sri R Venkataramani, representing the petitioner/Bank, would urge the following contentions:

- (i) According to the learned Attorney General, Section 35A of the Banking Regulation Act, 1949 ('Act' for short) confers such powers on the Reserve Bank of India, to give directions from time to time to banking companies regarding affairs of any banking company, if those affairs are prejudicial to the interest of any banking company.
- (ii) It is his vehement submission that powers conferred under Section 35A of the Act would clothe the petitioner also to seek any fraud involving banking transactions in

the country to be taken up together for investigation at the hands of an independent entity – in the case at hand the CBI.

- (iii) He would contend that the banks are obliged to act in terms of these directions, which are statutory in character and report instances of fraud, above a certain value only to the CBI.
- (iv) He would contend that in the light of the facts obtaining in the case at hand, which has multi-state dimensions, SIT constituted by the State will not do justice to investigation. Therefore, on interpretation of Section 35A, it has to be handed over to the CBI.
- (v) It is his further contention that the Managing Director of the Corporation is a high ranking official and the Chairman B. Nagendra is a sitting member of the State Legislative Assembly. Therefore, it is important that the investigation should be impartial. He would thus contend that on interpretation of Section 35A, matter should be handed over to the CBI.

- (vi) Section 35A of the Act would take within its sweep every act by every banking institution wherever it is situated, in the length and breadth of the country. He would submit that the role of RBI in the banking industry has been statutorily defined. The Act confers RBI to issue circulars/directions in public interest. The circulars issued by the RBI are a product of its executive authority and this is independent of any other law or scheme in regard to investigation relating to any Bank.
- (vii) The learned Attorney General, on the face of the case, would contend that the petitioner/Bank has complained to the CBI to commence investigation in terms of the Master Circular. The fact that, in the meanwhile, the jurisdictional police in the State began to act on the complaint given by the 6th respondent, cannot take away the right of the CBI independently acting, without being subject to the Delhi Special Police Establishment Act, 1946 ('DSPE Act' for short). It is his submission

that DSPE Act need not be brought into the picture at all. Section 35A of the Act is enough for the Bank to seek a direction at the hands of this Court to refer all the matters to the CBI. He would place reliance upon several judgments of the Apex Court and that of this Court to buttress his submission, that the power of this Court under Article 226 of the Constitution to direct investigation by a particular agency is unbridled. He, therefore, seeks allowing the petition and entrusting the entire investigation or any proceeding pending on the issue of the Corporation to the hands of the CBI.

Respondents:

6. Per contra, the learned senior counsel Sri B.V. Acharya and Prof. Ravi Varma Kumar would in unison project a threshold bar, of maintainability of the petition. It is their vehement submission that under Article 131 of the Constitution of India, this becomes a dispute between a wing of the Centre, and the State. If it is a dispute between a wing of the Centre and the State, no High Court has jurisdiction to entertain the petition and the matter should be

placed before the Apex Court under Article 131 of the Constitution. Both the learned senior counsel would contend that Section 35A of the Act would not clothe the Bank, to seek a direction that investigation should be transferred to the CBI, which is formed under the DSPE Act. The Act nowhere confers the power to unilaterally ask for such transfer, unless it is in compliance with Section 6 of the DSPE Act, which deals with consent of the State. They would admit the power of this Court to entrust investigation to any agency, but not the request made by the petitioner seeking transfer of the subject investigation to the CBI. They would also seek to place reliance, on two judgments *qua* maintainability, of the Apex Court and the Division Bench of this Court, to buttress their submissions.

7. The learned Attorney General of India would join issue to clarify that he is in no way taking support from the DSPE Act, to transfer the matter to the CBI. His entire submission is without even going into the DSPE Act. He would again iterate that Section 35A of the Act has enough power to seek such transfer. Therefore, he would contend that one need not get into the argument of Article

131 of the Constitution. However, he would seek to distinguish the judgments relied on by both the learned senior counsel appearing for the respondents.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. The afore-narrated facts are not in dispute. From the submissions that are made for which the judgment is reserved, two pivotal issues emerge viz.,

- (1) Whether the matter should be placed before the Apex Court owing to Article 131 of the Constitution of India?**
- (2) Whether section 35A of the Act would empower the RBI to seek a direction like the one that is sought in the case at hand to refer the matter to the CBI?**

10. Issue No.1:

Whether the matter should be placed before the Apex Court owing to Article 131 of the Constitution of India?

Since the contention *qua* Article 131 of the Constitution is projected to be the threshold bar, I deem it appropriate to answer it, at the outset. Section 131 of the Constitution of India reads as follows:

"131. Original jurisdiction of the Supreme Court.— Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

- (a) between the Government of India and one or more States; or**
- (b) between the Government of India and any State or States on one side and one or more other States on the other; or**
- (c) between two or more States,**

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute."

(Emphasis supplied)

Article 131 deals with original jurisdiction of the Supreme Court. The Apex Court, to the exclusion of any other Court, shall have

original jurisdiction, in any dispute between Government of India and one or more States; between Government of India and any State or States on the one side and one or more other States on the other side; or between two or more States. This becomes subject matter of interpretation by the Apex Court in its judgment in the case of **STATE OF WEST BENGAL v. UNION OF INDIA**¹. It becomes necessary to notice what fell for consideration before the Apex Court, and what was held by it on the relief sought by the petitioner therein. The Apex Court holds as follows:

"I. INTRODUCTION:

1. The present suit has been filed by the State of West Bengal against Union of India seeking the following reliefs:

- i. "Pass a Judgment and Decree declaring that registration of cases by the Defendant after withdrawal of Notification under Section 6 of the DSPE Act by the Plaintiff is unconstitutional and non-est;**
- ii. Pass Judgment and Decree thereby restraining and forbearing the Defendant from registering any case and/or investigating a case in connection with offences committed within the territory of State of West Bengal after withdrawal of the consent under Section 6 of the DSPE Act by the State;**
- iii. Pass a Judgment and Decree declaring that the action of the Defendant in registering cases by the Defendant after withdrawal of Notification under Section 6 of the DSPE Act by the Plaintiff is violative**

¹ 2024 SCC OnLine SC 1684

of Constitution of India as well as violative of the basic structure of the Constitution and the principle of federalism;

- iv. Pass a Judgment and Decree thereby quashing all cases registered by the Defendant after withdrawal of Notification under Section 6 of the DSPE Act by the Plaintiff and transmit those records to the Plaintiff for registration of regular cases by the police force of the Plaintiff;**
- v. Ad-interim order restraining the Defendant from proceeding with any investigation on an FIR and any proceeding arising therefrom, registered after November 16, 2018 when the consent under Section 6 of the DSPE Act was withdrawn by the Plaintiff, other than investigation with respect to an FIR filed/registered on an order of a competent court of law;**
- vi. Pass a Judgment and Decree granting such other and further reliefs that are deemed fit in the facts and circumstances of the case."**

2. On filing of the suit, preliminary objections have been raised by the defendant - Union of India with regard to the maintainability of the present suit. Through this judgment, we have dealt with the contentions of the parties on the aspect of maintainability.

... ..

II. SUBMISSIONS OF DEFENDANT:

4. The basic objection with regard to tenability of the suit is based on Article 131 of the Constitution of India (for short, "the Constitution"). The learned Solicitor General submitted that, upon interpretation of Article 131 of the Constitution, it is clear that the provisions of Article 131 of the Constitution are subject to the other provisions of the Constitution. He therefore submitted that, since the issue involved in the present *lis* is also an issue arising in certain appeals pending before this Court, under Article 136 of the Constitution, a fresh suit under Article 131 of the Constitution would not be tenable. It is submitted that the term "subject to the provisions of this Constitution" has to be interpreted as "subject to the other

provisions of the Constitution including Article 136". It is therefore submitted that, since the issue with regards to the same subject matter is pending before this Court under Article 136 of the Constitution, a suit for the same purpose under Article 131 of the Constitution is barred.

... ..

6. While making a reference to the term "subject to the provisions of this Constitution" in Article 131 of the Constitution, the learned Solicitor General submitted that, since the subject matter of the present suit is also pending before this Court or the High Courts under Article 136 or 226 of the Constitution respectively, the present suit would not be tenable.

... ..

61. Section 6 of the DSPE Act reads thus:

"6. Consent of State Government to exercise of powers and jurisdiction.—Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union Territory or railway area, without the consent of the Government of that State."

62. A perusal of Section 6 of the DSPE Act would reveal that nothing contained in Section 5 shall be deemed to enable any member of the DSPE to exercise powers and jurisdiction in any area in a State, not being a Union Territory or railway area, without the consent of the Government of that State.

63. A perusal of the entire scheme would therefore reveal that right from the constitution of the special police force which is called DSPE, issuance of notifications specifying the offences or classes of offences which are to be investigated by the DSPE, superintendence and administration of DSPE and the extension of powers and jurisdiction of DSPE to the areas beyond the Union Territories, it is the Central Government which is vitally concerned with. Not only that, only such offences which the Central Government notifies in the official gazette, can be investigated by the DSPE. Under Section 4 of the DSPE Act, except the offences under the PC Act in which the superintendence

will be with the CVC, the superintendence of the DSPE in all other matters would vest with the Central Government.

64. If the powers and jurisdiction of the members of the DSPE are to be extended to any area including railway areas, in a State not being a Union Territory, the same cannot be done unless the Central Government passes an order in that regard. The statutory scheme makes it clear that, for extending such powers under Section 5 of the DSPE Act, it cannot be done without the consent of the Government of that State under Section 6 of the DSPE Act.

65. In that view of the matter, we find that the contention of the learned Solicitor General that even if the CBI, being an independent agency, is considered to be an instrumentality of the State under Article 12 of the Constitution, it cannot be equated to the term Government of India as contemplated under Article 131 of the Constitution, in our view, holds no water.

66. We further find that the very establishment, exercise of powers, extension of jurisdiction, the superintendence of the DSPE, all vest with the Government of India. In that view of the matter, in our opinion, the reliance placed by the learned Solicitor General on the judgment of this Court in the case of *State of Bihar v. Union of India* (supra), is not well placed. In our view, the CBI is an organ or a body which is established by and which is under the superintendence of the Government of India in view of the statutory scheme as enacted by the DSPE Act.

...

...

...

75. In our opinion, Article 131 of the Constitution is a special provision which deals with the original jurisdiction of this Court in case of a dispute between the Federal Government and the State Governments. It provides for a special jurisdiction to this Court to decide any question on which the existence or extent of a legal right depends. Any dispute either between the

Government of India and one or more States; or between the Government of India and any State or States on one side and one or more other States on the other; or between two or more States which involve a question on which the existence or extent of a legal right depends are covered by this provision. A special provision has been made for deciding the question on which the existence or extent of a legal right between the special parties mentioned therein has been provided. Therefore, the words "subject to the provisions of this Constitution" will have to be considered in that context. The jurisdiction under Article 131 of the Constitution would only be subject to any other provision in the Constitution which provides for entertaining a dispute between the parties mentioned therein. We could notice only one such other provision in the Constitution, which is Article 262, which reads thus:

"262. Adjudication of disputes relating to waters of inter-State rivers or river valleys.—(1)

Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1)."

(Emphasis supplied)

The issue before the Apex Court was suit filed by the State of West Bengal against the Union of India. The prayer sought was to pass a judgment and decree declaring registration of cases by the defendant/Union of India after withdrawal of notification of general

consent under Section 6 of the DSPE Act by the State of West Bengal, to be unconstitutional and *non est*. After detailed reasoning, the answer lies at paragraph 75 *supra*. The Apex Court holds that under Article 131 of the Constitution of India, the original jurisdiction of the Court would arise when the dispute is between the Federal Government and the State Government and the dispute is between Government of India and more States and Government of India and other States.

11. The facts before the Apex Court were filing of a suit by the State of West Bengal against the Union of India. The facts obtaining in the case at hand are distinguishable without much ado. There is no Union of India filing any case against the State Government in the case at hand. It is the Union Bank of India which is seeking a direction for transfer of the matter to the CBI. Whether it should be done or not, is on the merit of the matter. Therefore, to project a threshold bar, placing reliance on Article 131 of the Constitution to be applicable in the case at hand, is neither here nor there, such legal maundering is unacceptable. In the considered view of this Court there is no dispute between the Union

of India and the State within the parameters laid down by the Apex Court, in paragraph 75, of its judgment, extracted *supra*.

12. Much reliance is placed upon the judgment rendered by the Division Bench of this Court to contend that the Division Bench follows the aforesaid judgment of the Apex Court and answers the issue. The Division Bench of this Court in the case of **BASANAGOUDA R PATIL AND STATE OF KARNATAKA**² holds as follows:

"....

85. As regards maintainability of the petitions under Article 131 and as regards DSPE Act, it is relevant to refer to a recent pronouncement of the Hon'ble Apex Court in the case of **THE STATE OF WEST BENGAL vs. UNION OF INDIA (ORIGINAL SUIT No.4/2021)**. In the said judgment, the Hon'ble Apex Court has held thus:

"We find that, in the present suit, the plaintiff is raising the legal issue as to whether after withdrawal of the consent under Section 6 of the DSPE Act, the CBI via the defendant – Union of India can continue to register and investigate cases in its area in violation of the provisions of Section 6 of the DSPE Act. The same has been sought to be attacked by the defendant – Union of India by raising various contentions challenging the maintainability of the suit. In our considered opinion, the contentions raised by the defendant, do not merit acceptance and for the reasons given hereinbefore, are rejected. The preliminary objection is, therefore, rejected. However, we clarify that the aforesaid findings are for the purposes of deciding

² **W.P.27220 of 2023 c.w W.P.670 of 2024 decided on 29th August 2024**

preliminary objection and will have no bearing on merits of the suit. The suit shall proceed in accordance with law on its own merits.”

86. In the present cases, this court finds it pertinent to examine the precedent set in ***State of West Bengal v. Union of India***, which firmly establishes the maintainability of suits under Article 131 of the Constitution of India when a dispute concerns the existence or extent of a legal right between the Central Government and a State Government. The court in that case, affirmed that even if the legal right in question does not directly stem from the Constitution, the Supreme Court retains original jurisdiction to adjudicate such disputes.

87. These writ petitions raise complex questions regarding the interplay between the powers of the State and Central Governments in the context of CBI investigations. The petitioner challenges the State's withdrawal of consent for a CBI investigation into alleged offences under the Prevention of Corruption Act, 1988, against the Deputy Chief Minister of Karnataka, contending that the withdrawal is arbitrary, mala fide, and impedes the on-going investigation.

87. The respondents, including the State Government and the Deputy Chief Minister, argue that the initial consent granted to the CBI was void *ab initio* due to procedural irregularities and statutory violations. They further assert that the State's withdrawal of consent is legally valid and within its powers.

88. The CBI maintains that the withdrawal of consent does not affect pending investigations and that it is obligated to complete the investigation and file its final report. The CBI disputes the respondents' claims regarding the invalidity of the initial consent and the alleged procedural irregularities.

89. In these matters, the core issue pertains to the jurisdiction of the Central Bureau of Investigation (CBI) to operate within a State's boundaries following the State Government's withdrawal of consent. This directly impacts the State's authority and control over its police force, a matter that is constitutionally significant. The dispute involves interpreting the Delhi Special Police Establishment (DSPE) Act in conjunction with the constitutional provisions regarding the division of

powers between the Central Government and the State Government.

90. The Court, after carefully considering the arguments presented and the relevant legal provisions, notes that the dispute essentially involves a conflict between the State government and the CBI, which operates under the superintendence of the Central Government. The issues raised concern the interpretation of statutory provisions like the DSPE Act and the Prevention of Money Laundering Act (PMLA), and their relationship with constitutional provisions regarding the division of powers between the Central Government and the State Government.

91. Drawing upon the rationale established in the **State of West Bengal v. Union of India** case mentioned supra, this court finds that these writ petitions clearly fall within the ambit of Article 131 of the Constitution of India. The dispute involves a legal question concerning the extent of the Central Government's authority to deploy the CBI within a State, that has withdrawn its consent. The resolution of this dispute will directly impact the legal rights and jurisdiction of both the Central and State Governments, making it a fit subject for adjudication under the Supreme Court's original jurisdiction as per Article 131 of the Constitution of India.

92. In light of these considerations, we hold that the present writ petitions are not maintainable. The dispute, at its core, is between the CBI, representing the Union Government, and the State Government. Such disputes, which involve questions about the extent of the Central Government's authority and the State's autonomy, are more appropriately addressed within the exclusive original jurisdiction of the Hon'ble Supreme Court under Article 131 of the Constitution of India.

93. Accordingly, the writ petitions are dismissed as not maintainable. However, the petitioners are granted liberty to pursue appropriate remedies before the Hon'ble Supreme Court under Article 131 of the Constitution of India.

94. Thus, both the writ petitions viz., W.P.No.27220/2023 and W.P.No.670/2024 are hereby dismissed as not maintainable.”

The facts obtaining before the Division Bench were different and therefore are distinguishable with the facts and the contentions urged in the case at hand, again without much *ado*. Above all, the Division Bench was following the judgment of the Apex Court in the case of **STATE OF WEST BENGAL** *supra*. Therefore, the submission of the learned Attorney General of India that Article 131 of the Constitution of India is not even applicable in the case at hand becomes acceptable and there is no threshold bar for this Court to consider the issue brought up by the petitioner/Union Bank of India in the subject petition. The issue is answered accordingly.

13. Issue No.2:

Whether section 35A of the Act would empower the RBI to seek a direction like the one that is sought in the case at hand to refer the matter to the CBI?

Now coming to the ***nub*** of the submissions. The ***sheet anchor*** of the learned Attorney General of India is **Section 35A** of the Act. It reads as follows:

“35-A. Power of the Reserve Bank to give directions.—(1) Where the Reserve Bank is satisfied that—

- (a) in the public interest; or
- (aa) in the interest of banking policy; or
- (b) **to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or**
- (c) **to secure the proper management of any banking company generally;**

it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such condition as it thinks fit, subject to which the modification or cancellation shall have effect.”

(Emphasis supplied)

Section 35A of the Act empowers the Reserve Bank of India to issue directions. To whom is also found in Section 35A of the Act which is to any banking company. It clearly enumerates to prevent the **affairs of any banking company** being conducted in a

detrimental manner, prejudicial to the interest of depositors, directions may be issued or in public interest. Section 35 of the Act reads as follows:

“35. Inspection.—(1) Notwithstanding anything to the contrary contained in Section 235 of the Companies Act, 1956 (1 of 1956), the Reserve Bank at any time may, and on being directed so to do by the Central Government shall, cause an inspection to be made by one or more of its officers of any banking company and its books and accounts; and the Reserve Bank shall supply to the banking company a copy of its report on such inspection.

(1-A) (a) Notwithstanding anything to the contrary contained in any law for the time being in force and without prejudice to the provisions of sub-section (1), the Reserve Bank, at any time, may also cause a scrutiny to be made by any one or more of its officers, of the affairs of any banking company and its books and accounts; and

(b) a copy of the report of the scrutiny shall be furnished to the banking company if the banking company makes a request for the same or if any adverse action is contemplated against the banking company on the basis of the scrutiny.

(2) It shall be the duty of every director or other officer or employee of the banking company to produce to any officer making an inspection under sub-section (1) or a scrutiny under sub-section (1-A) all such books, accounts and other documents in his custody or power and to furnish him with any statements and information relating to the affairs of the banking company as the said officer may require of him within such time as the said officer may specify.

(3) Any person making an inspection under sub-section (1) or a scrutiny under sub-section (1-A) may examine on oath any director or other officer or employee of the banking company in relation to its business, and may administer an oath accordingly.

(4) The Reserve Bank shall, if it has been directed by the Central Government to cause an inspection to be made, and may, in any other case, report to the Central Government on any inspection or scrutiny made under this section, and the Central Government, if it is of opinion after considering the report that the affairs of the banking company are being conducted to the detriment of the interests of its depositors, may, after giving such opportunity to the banking company to make a representation in connection with the report as, in the opinion of the Central Government, seems reasonable, by order in writing—

- (a) prohibit the banking company from receiving fresh deposits;**
- (b) direct the Reserve Bank to apply under Section 38 for the winding up of the banking company:**

Provided that the Central Government may defer, for such period as it may think fit, the passing of an order under this sub-section, or cancel or modify any such order upon such terms and conditions as it may think fit to impose.

(5) The Central Government may, after giving reasonable notice to the banking company, publish the report submitted by the Reserve Bank or such portion thereof as may appear necessary.

***Explanation.*—For the purposes of this section, the expression “banking company” shall include—**

- (i) in the case of a banking company incorporated outside India, all its branches in India; and**
- (ii) in the case of a banking company incorporated in India—**
 - (a) all its subsidiaries formed for the purpose of carrying on the business of banking exclusively outside India; and**

(b) all its branches whether situated in India or outside India.

(6) The powers exercisable by the Reserve Bank under this section in relation to regional rural banks may (without prejudice to the exercise of such powers by the Reserve Bank in relation to any regional rural bank whenever it considers necessary so to do) be exercised by the National Bank in relation to the regional rural banks, and accordingly, sub-section (1) to (5) shall apply in relation to regional rural banks as if every reference therein to the Reserve Bank included also a reference to the National Bank."

(Emphasis supplied)

Section 35 deals with inspection. The Reserve Bank of India has power to inspect any banking company or a body corporate. 'Company' is defined under the Act. Section 5 deals with interpretation of the words found in the statute. 'Company' is defined at sub-section (d) of Section 5. It reads as follows:

"5. Interpretation.— In this Act, unless there is anything repugnant in the subject or context,—

... ..

(d) "company" means any company as defined in Section 3 of the Companies Act, 1956; and includes a foreign company within the meaning of Section 591 of that Act;"

(Emphasis supplied)

Company means any Company defined under Section 3 of the Companies Act. 'Prescribed' means prescribed by the Rules made under the statute. Circulars are issued by the RBI in exercise of its power under Section 35A of the Act. Those circulars issued are held to have a flavor of a statute. This is the settled principle of law, as the Apex Court in the case of **ICICI BANK LIMITED v. OFFICIAL LIQUIDATOR OF APS STAR INDUSTRIES LIMITED**³, considers this issue of circulars / guidelines issued by the RBI, to have a statutory flavour holding thus:

"Brief analysis of the BR Act, 1949

30. The BR Act, 1949 provides for the comprehensive definition of "banking" so as to bring within its scope all institutions which receive deposits for lending or investment and to give RBI a control over banking companies. It is an Act to consolidate and amend the law relating to banking. Section 2 clarifies that the 1949 Act shall be in addition to and not in derogation of the Companies Act, 1956 and any other law for the time being in force save as therein expressly provided.

31. Section 5(1)(a) is the interpretation section. It* [Ed.: Section 5(b) defines "banking".] defines "banking" to mean "accepting deposits for lending". This is principal business of a bank. Section 5(c) defines "banking company" as any company which transacts *the business* of banking. Thus, a banking company has to be a company in the first instance. Section 5(ca) defines "banking policy" to mean any policy which is specified from time to time by RBI in the interest of *banking system* or in the interest of monetary stability or economic

³ (2010) 10 SCC 1

growth having due regard to the interest of the depositors and efficient use of these deposits.

32. Part II deals with "business of banking companies". Section 6(1) in Part II says that *in addition to the business of banking*, a banking company may engage in any one or more of the forms of business enumerated in clauses (a) to (o). It covers borrowing, lending, advancing of money; acquiring and holding and dealing with property (security) or right, title and interest therein; selling, improving leasing or turning into account or otherwise dealing with such security; *doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company* and any other form of business which the Central Government may notify. Thus, Section 6(1) has a general provision and the provision which enumerates topics/fields in which the banks can carry on their business.

33. Section 8 begins with non obstante clause. It says that no banking company shall deal in the buying or selling of goods except in connection with the realisation of security. Section 9 also begins with a non obstante clause. It deals with restrictions on disposal of non-banking assets. Both Sections 8 and 9 are prohibitions and restrictions under the Act which are covered by the expression "save as except provided" in Section 2 of the Act. As stated earlier, the BR Act, 1949 is in addition to the Companies Act, 1956 or any other law for the time being in force and its provisions shall not be treated to be in derogation of any other law save and except to the extent of any activity which is prohibited or restricted (see Section 2).

34. Section 12 says that no banking company shall carry on business unless it satisfies certain conditions. Section 17 refers to creation of reserve fund. Section 18 refers to creation of cash reserve. Section 20 refers to restrictions on loans and advances.

35. Section 21 deals with the power of RBI to control advances by banking companies. Section 21 empowers RBI to frame policies in relation to advances to be followed by banking companies. It further says that

once such policy is made all banking companies shall be bound to follow them. Section 21(1) is once again a general provision empowering RBI to determine policy in relation to advances whereas Section 21(2) empowers RBI to give directions to banking companies as to items mentioned there i.e. in Section 21(2). Under Section 21(3) every banking company is bound to comply with directions given by RBI at the peril of penalty being levied for non-compliance. Section 35-A says that where RBI is satisfied that in the interest of banking policy it is necessary to issue directions to banking companies it may do so from time to time and the banking companies shall be bound to comply with such directions. Thus, in exercise of the powers conferred by Sections 21 and 35-A of the said Act, RBI can issue directions having statutory force of law. Section 36 deals with further powers and functions of RBI. Under Section 39 it is RBI which shall be the Official Liquidator in any proceedings concerning winding up of a banking company.

36. The above analysis of the various provisions of the 1949 Act shows that RBI is empowered to regulate the business of the banking companies. That, RBI is empowered to control management of banking companies in certain situations. It is empowered to lay down conditions on which the banking companies will operate. It is empowered to regulate paid-up capital, reserve fund, cash fund and above all to lay down policies in the matter of advances to be made by the banking companies, allocation of resources, etc. While laying down such policies under the said Act, RBI can lay down parameters enabling banking companies to expand its business. For example, RBI's permission is required to be obtained if a banking company seeks to deal in "derivatives". It is a business which will not fall in clauses (a) to (o) of Section 6(1) and yet RBI can lay down guidelines and directions enabling banking companies to deal in derivatives like futures and options.

37. The point we are trying to make is that apart from the principal business of accepting deposits and lending the said 1949 Act leaves ample scope for the banking companies to venture into new businesses subject to such businesses being subject to the control of the regulator viz. RBI. In other words, the 1949 Act

allows banking companies to undertake activities and businesses as long as they do not attract prohibitions and restrictions like those contained in Sections 8 and 9. In this connection we need to emphasise that Section 6(1)(n) enables a banking company to do all things as are incidental or conducive to promotion or advancement of the business of the company. Section 6(1) enables banking companies to carry on different types of businesses. Under Section 6(1), these different types of businesses are in addition to business of banking viz. core banking. The importance of the words "in addition to" in Section 6(1) is that even if different businesses under clauses (a) to (o) are shut down, the company would still be a banking company as long as it is in the core banking of accepting deposits and lending so that its main income is from the spread or what is called as "interest income". Thus, we may broadly categorise the functions of the banking company into two parts viz. core banking of accepting deposits and lending and miscellaneous functions and services. Section 6 of the BR Act, 1949 provides for the form of business in which banking companies may engage. Thus, RBI is empowered to enact a policy which would enable banking companies to engage in activities in addition to core banking and in the process it defines as to what constitutes "banking business".

38. The BR Act, 1949 basically seeks to regulate banking business. In the cases in hand we are not concerned with the definition of banking but with what constitutes "banking business". Thus, the said BR Act, 1949 is an open-ended Act. It empowers RBI (regulator and policy framer in matter of advances and capital adequacy norms) to develop a healthy secondary market, by allowing banks inter se to deal in NPAs in order to clean the balance sheets of the banks which guideline/policy falls under Section 6(1)(a) read with Section 6(1)(n). Therefore, it cannot be said that assignment of debts/NPAs is not an activity permissible under the BR Act, 1949. Thus, accepting deposits and lending by itself is not enough to constitute the "business of banking". The dependence of commerce on banking is so great that in modern money economy the cessation

even for a day of the banking activities would completely paralyse the economic life of the nation. Thus, the BR Act, 1949 mandates a statutory comprehensive and formal structure of banking regulation and supervision in India.

39. The test to be applied is—whether trading in NPAs has the characteristics of a bona fide banking business. That test is satisfied in this case. The Guidelines issued by RBI dated 13-7-2005 itself authorises the banks to deal *inter se* in NPAs. These guidelines have been issued by the regulator in exercise of the powers conferred by Sections 21 and 35-A of the Act. They have a statutory force of law. They have allowed the banks to engage in trading in NPAs with the purpose of cleaning the balance sheets so that they could raise the capital adequacy ratio. All this comes within the ambit of Section 21 which enables RBI to frame the policy in relation to advances to be followed by the banking companies and which empowers RBI to give directions to banking companies under Section 21(2). These guidelines and directions following them have a statutory force.

40. When a delegate is empowered by Parliament to enact a policy and to issue directions which have a statutory force and when the delegatee (RBI) issues such guidelines (policy) having statutory force, such guidelines have got to be read as supplement to the provisions of the BR Act, 1949. The “banking policy” is enunciated by RBI. Such policy cannot be said to be ultra vires the Act. The idea behind empowering RBI to determine the policy in relation to advances is to enable banking companies to expand their business of banking and in that sense such guidelines also define—as to what constitutes banking business.”

(Emphasis supplied)

The Apex Court considers the purport of circulars issued by the Reserve Bank of India. The Circulars so issued, no doubt, have a statutory force, but on whom they would become binding is also

elucidated by the Apex Court. It is undoubtedly binding on any Banking institution in the nation. The issue would be whether, Section 35A of the Act would clothe such power upon any banking institution, like the petitioner, in the nation, to invoke the said provision – Section 35A and seek entrustment of investigation in any crime, to the hands of any particular agency, in the case at hand the CBI. Any crime would mean, crimes that are pending before the respective State Governments in which the State is investigating into the matter.

The Issue:

14. The issue in the *lis* sprung from certain allegations of misappropriation of funds. In furtherance of which, as observed hereinabove, two crimes are registered – one by the State and the other by the CBI. Why did the Bank go before the CBI is in terms of a Circular issued by the RBI under Section 35A of the Act. Observing that wherever the amount of alleged fraud exceeds ₹50/- crores, the matter shall be investigated only by the CBI. The petitioner being a banking company is undoubtedly bound by it. Therefore, it has knocked at the doors of the CBI.

15. The State Government has, on a complaint so registered by the 6th respondent, registers a crime in Crime No.118 of 2024. Certain Banking officials were also accused at the time of registration of crime. They are all dropped while filing the charge sheet. The investigation is complete and the charge sheet is filed. In the considered view of this Court, Section 35A of the Act will not give teeth to any banking industry to choose the investigating agency of the investigation being conducted in a particular State. If this would be permitted, it would be doing violence to the statute itself. This renders the DSPE Act redundant, as existence of CBI is under DSPE Act, and it can intervene in any State only in terms of the DSPE Act or when such investigations are handed over to the CBI by the Apex Court or this Court.

16. The issue that is projected by the petitioner is with regard to siphoning of several crores of the funds belonging to the Corporation. It projects a very sorry state of affairs of the State. M/s Karnataka Maharshi Valmiki Scheduled Tribes Development Corporation Limited was incorporated on 26-07-2006 to carry on the business of extending financial and technical assistance to the

members belonging to Scheduled Tribe community in the State of Karnataka to create avenues for their economic development, to assist unemployed Scheduled Tribes and to support agricultural labourers belonging to Scheduled Tribes and so on and so forth. Therefore, funds belonging to the scheduled tribes ought to have been treated with great care. It shocks the conscience of the Court that funds of schedule tribe community also is subject matter of scam of misappropriation of funds belonging to a schedule tribe development corporation.

17. It is a matter of record that a sitting member of the Legislative Assembly and certain high functionaries are allegedly involved in the alleged misappropriation of funds. When the Ministers or high functionaries who are involved in particular allegations and those allegations are being investigated into, such investigations must be entrusted to independent agencies, agencies which are not under the control of the State Government and it is only then it would instil public confidence in the investigation or provide credibility to such investigation. But that

cannot be on an interpretation of Section 35A of the Act, as is projected by the learned Attorney General.

18. As observed hereinabove, the case at hand projects interpretation of Section 35A of the Act to be the sheet anchor for claiming entrustment of investigation to the hands of the CBI. This is unacceptable, as interpretation of Section 35A, if permitted to any banking institution to seek transfer of investigation to the hands of the CBI, it would be giving Section 35A the powers that the Statute itself does not confer. A *caveat*, that would not put any shackles on the hands of this Court to refer any matter, to any independent investigating agency in exercise of its jurisdiction under Article 226 of the Constitution of India read with Section 482 of the Cr.P.C. or otherwise. But that cannot be in a case projected for interpretation of Section 35A. If it were to be any other interpretation, the Court would have considered the issue. Section 35A, as observed hereinabove, is only empowering the RBI the supervisory and complete control of the affairs of any banking institution. Merely because certain officers of the Union Bank of India/the petitioner are accused at the stage of registration of crime

and the fact that the Union Bank of India, as necessary in law *qua* the Bank, has approached the CBI, would not mean that this Court would accept such far fetched interpretation of Section 35A. Non acceptance of the submission of the learned Attorney General of India would not however mean that the CBI which is investigating into the crime registered by the petitioner cannot draw those persons into the web of proceedings, even if they are dropped by the State in Crime No.118 of 2024 or any other person accused in the crime, but that can happen only in accordance with law. The observations made in this order will not come in the way of any action by the petitioner in accordance with law.

19. Insofar as judgments relied upon by the respective learned Counsel, they project no qualm about the principles laid down therein. They are not necessary to be considered, as the issue in the case at hand is to be considered on the judgments that are noticed hereinabove. Quoting all the judgments of both the parties would only generate bulk of this judgment and would not take the cause of the petitioner any further.

20. For the aforesaid reasons and on the observations, the petition lacking in merit, stands ***dismissed***.

Consequently, I.A.No.1 of 2024 also stands disposed.

Sd/-
(M. NAGAPRASANNA)
JUDGE

bkp
CT:MJ