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In Supreme Court, Centre says it sends CBI to States for probes

The Centre has claimed it has no role in the day-to-day functioning of the CBI or how and where it investigates

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The CBI headquarters in New Delhi. File | Photo Credit: The Hindu

The Supreme Court on Wednesday refused to accept at face value the Centre's claim that it has no control over the Central Bureau of Investigation (CBI), asking who else can send the premier investigating agency to States to investigate cases.

“Who would be the authority to authorise the CBI to proceed to another State for investigation?” Justice Sandeep Mehta, a member of the two-judge Bench headed by

Justice B.R. Gavai, asked Solicitor General Tushar Mehta, appearing for the Centre.

“The Central government,” Mr. Mehta acquiesced finally.

The court was hearing an original suit filed by the State of West Bengal under Article 131 of the Constitution, accusing the Union government of “interfering” in cases originating within the State’s jurisdiction by unilaterally authorising the CBI to probe them.

West Bengal said the Centre continues to employ the CBI regardless of the fact that the State had withdrawn its general consent to CBI investigations within its territory under Section 6 of the Delhi Special Police Establishment (DSPE) Act, 1946 way back in November 2018. The CBI has registered over 15 cases in West Bengal.

The Solicitor General had argued that the suit was not maintainable and should be dismissed at the outset. West Bengal had wrongly made the Union the defendant in the suit. The petitioners were wrong to term the CBI as the “police force of the Union”. The Centre had no role in where and how the CBI conducted its investigation, he contended.

Questioning this claim, Justice Mehta drew the Solicitor General’s attention to Section 5(1) of the DSPE Act, the statute which governs the premier probe agency.

Section 5(1) authorises the Central government to “pass orders extending to any area (including Railway areas) in a State, not being a Union Territory, the powers and jurisdiction of members of the Delhi Special Police Establishment (CBI) or the investigation of any offences or classes of offences...”.

“If what you are saying is true, why does Section 5(1) give the Central government the power and jurisdiction to define the powers and jurisdiction of the CBI under DSPE?” Justice Mehta posed to the top law officer.

“Somebody will have to,” Mr. Mehta replied cautiously.

“Who is that ‘someone?’” Justice Mehta persisted.

When the Solicitor General ventured it may be the CBI Director, Justice Mehta referred to Section 5(1) again to ask whether the law officer meant the “Director could be the Central

government”.

“Are you saying the Director and the Central government are the same? Which would be the department of the Central government authorised under Section 5(1)?” Justice Mehta asked.

The Solicitor General finally said it may be the Department of Personnel and Training or the Home Ministry.

Mr. Mehta further argued that the suit could not be amended to make CBI a defendant as it was not a ‘state’ under Article 131. He had submitted that original suits under Article 131 could only be filed for disputes involving the Centre and States.

The court reserved its judgment on the maintainability of the original suit filed by West Bengal against the Union government.

On May 2, the court had made it clear to the Centre that “law and order is a State subject”.

Senior advocate Kapil Sibal, for West Bengal, had said the intent of the Centre was to “get in through the CBI, then use the Directorate of Enforcement (ED) and then do whatever is to be done... This has far-reaching repercussions”.

Another Bench of the Supreme Court is tackling a similar question of law related to the State of Tamil Nadu in the case of Ankit Tiwari, an ED officer against whom the Tamil Nadu Directorate of Vigilance and Anti-Corruption had launched a criminal prosecution for bribery. The ED had approached the apex court claiming the case be transferred to it as Mr. Tiwari was a Central government employee.