

**Non-Reportable**

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION**

**Writ Petition (Civil) No. 1374 of 2020**

**Common Cause (A Registered Society)**

**.... Petitioner**

***Versus***

**Union of India & Ors.**

**.... Respondents**

**JUDGMENT**

**L. NAGESWARA RAO, J.**

**1.** This Writ Petition has been filed in public interest under Article 32 of the Constitution of India for quashing the order dated 13.11.2020 issued by Respondent No.1, which extended the tenure of the Respondent No.2 as Director of Enforcement in the Directorate of Enforcement and for consequential direction to Respondent No.1 to appoint the Director of Enforcement in accordance with the procedure prescribed under Section 25 of the Central Vigilance Commission Act, 2003 (for short, 'CVC Act').

2. On 19.11.2018, the second Respondent who was working as Principal Special Director in the Directorate of Enforcement was appointed as Director of Enforcement for a period of two years from the date of his assumption of charge of the post or until further orders, whichever is earlier. By an office order dated 13.11.2020, the President of India approved the modification of the order dated 19.11.2018, by amending the period of appointment from two years to three years. The grievance of the Petitioner is that the extension of tenure of the second Respondent to three years is contrary to Section 25 of the CVC Act. It has been averred in the Writ Petition that Respondent No.2 attained the age of superannuation in May, 2020. The initial tenure of two years came to an end on 19.11.2020. In the meanwhile, on 13.11.2020, the tenure of the second Respondent was extended from two years to three years. As the second Respondent attained the age of superannuation in May, 2020, the second Respondent was not holding any post equivalent or above the rank of Additional Secretary to the Government of India on 13.11.2020 when his tenure was extended. Therefore, he was not eligible to be considered for extension of service as Director of Enforcement. It was further stated in the Writ Petition that the modification of the

order of appointment could not have been retrospectively made. It was also alleged that when a procedure is prescribed by the Statute, it has to be strictly followed and whatever could not be done directly cannot be achieved by indirect methods.

**3.** The contentions raised in the Writ Petition were refuted by the Union of India in its counter affidavit by stating that Section 25 of the CVC Act prescribes the minimum tenure of a Director of Enforcement. The extension of tenure of the second Respondent was on the basis of a recommendation made by the Committee headed by the Chief Vigilance Commissioner on 11.11.2020 in view of administrative exigencies. The initial order of appointment of the second Respondent was for a period of two years, strictly in accordance with Section 25 of the CVC Act. For all purposes, the second Respondent is deemed to be in service till 19.11.2020. The second Respondent who was working as Director of Enforcement was holding the office and post not below to that of the post of Additional Secretary to the Government of India and it cannot be said that he was ineligible for extension of his tenure on 13.11.2020. Though there is no provision in the CVC Act for extension or reappointment of Director of Enforcement, section 21 of the

General Clauses Act, 1897 enables the Government to extend the tenure of the second Respondent.

**4.** We have heard Mr. Dushyant Dave, learned Senior Counsel for the Petitioner, Mr. Tushar Mehta, learned Solicitor General of India and Mr. P.S. Narasimha, learned Senior Counsel for the third Respondent, the Central Vigilance Commission. Mr. Dave argued that Section 25 (d) of the CVC Act provides for continuance of the Director of Enforcement for a period of not less than two years from the date of his assumption of the office. The said provision has to be interpreted on the basis of the law declared by this Court in ***Vineet Narain and Ors. v. Union of India & Anr.***<sup>1</sup>.

According to Mr. Dave, the Central Government has the power to appoint Director of Enforcement on the basis of recommendations of the committee provided an officer is not below the rank of Additional Secretary to the Government of India. The tenure of the office of the Director of Enforcement is for a minimum period of two years from the date of assumption of office and the Director cannot be transferred, except with the consent of the Committee. The extension or curtailment of service dealt with in Section 25 (f) is applicable to officers other than the Director of

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<sup>1</sup> (1998) 1 SCC 226

Enforcement. Emphasis was laid by Mr. Dave on Fundamental Rule 56, according to which there cannot be any extension of the service of Director of Enforcement. There is no exception carved out in Fundamental Rule 56 for appointment, reappointment/extension of officers other than those who are mentioned in the Rule. Mr. Dave asserted that the order impugned in the Writ Petition suffers from the vice of malice in law as it was passed for extraneous considerations. In support of the said submission, Mr. Dave relied upon a judgment of this Court in ***Smt S.R. Venkataraman v. Union of India and Anr***<sup>2</sup>. He further stated that Section 21 of the General Clauses Act has no application to Section 25 of the CVC Act by relying upon the judgments of this Court in ***Strawboard Manufacturing Co., Ltd. v. Gutta Mill Workers' Union***<sup>3</sup>, ***State of Madhya Pradesh v. Ajay Singh & Ors.***<sup>4</sup>, ***Kazi Lhendup Dorji v. Central Bureau of Investigation & Ors.***<sup>5</sup> and ***State of Bihar v. D.N. Ganguly & Ors.***<sup>6</sup>. Mr. Dave also placed reliance upon a judgment of this Court in ***Prakash Singh & Ors. v. Union of India & Ors.***<sup>7</sup> and the later

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2 (1979) 2 SCC 491

3 (1953) 4 SCR 439

4 (1993) 1 SCC 302

5 1994 Suppl. (2) SCC 116

6 1959 SCR 1191

7 (2006) 8 SCC 1

orders passed in ***Prakash Singh & Ors. v. Union of India & Ors.*** reported in (2019) 4 SCC 1 and (2019) 4 SCC 13. Mr. Dave emphatically argued that there is no power conferred on the Union of India to extend the tenure of Director of Enforcement and the Union of India cannot take refuge under the plea that important investigations are pending for which reason the tenure of the Director of Enforcement can be extended. There are several competent officers who are eligible for consideration of appointment to the post of Director of Enforcement and they should not be deprived of the opportunity to be appointed in accordance with the procedure prescribed under the CVC Act. Even assuming without conceding that the tenure of Respondent No.2 can be extended, it cannot be for a period of one year when the original appointment was made for a period of two years. He submitted that the nature of duties exercised by the Director of Enforcement would involve supervision of very important investigations. Under the guise of pendency of investigations into matters which have cross-border ramifications, the tenure of the Director of Enforcement cannot be extended periodically.

**5.** The learned Solicitor General of India raised a preliminary objection on the maintainability of the Writ Petition in public

interest filed by the Petitioner. He submitted that the issue essentially relates to a service matter and it is settled law that Writ Petitions in public interest are not maintainable in regard to disputes relating to service. He countered the submissions of Mr. Dave by submitting that the CVC Act was enacted in the year 2003 to give effect to the recommendations of the Independent Review Committee and judgment of this Court in **Vineet Narain** (supra). The minimum tenure of at least two years provided in Section 25(d) of the CVC Act is to ensure uninterrupted term of service so that the incumbent acts independently without interference from the executive. It is to insulate the office of Director of Enforcement from extraneous pressures. It was contended by the learned Solicitor General that the words ‘not less than two years’ have to be read as ‘not more than two years’, if the argument of the Petitioner is to be accepted. He submitted that the rule of literal construction of a statute has to be followed when there is no ambiguity in the language of the provisions of the Act. Reliance was placed on **Pakala Narayanaswami v. King-Emperor<sup>8</sup>, Rananjaya Singh v. Baijnath Singh & Ors.<sup>9</sup> and Nathi Devi v Radha Devi Gupta<sup>10</sup>.**

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8 AIR 1939 PC 47

9 (1955) 1 SCR 671

10 (2005) 2 SCC 271

6. Any interpretation contrary to the plain words of a statute would result in rewriting the statute which is not permissible. While accepting that there is no specific provision for extension of the tenure of the Director of Enforcement in Section 25, it was contended that the Union of India has the power to extend the tenure of Director of Enforcement by resorting to Section 21 of the General Clauses Act. The learned Solicitor General referred to the judgment of this Court in ***State of Punjab v Harnek Singh***<sup>11</sup> to submit that it is settled law that the General Clauses Act is a part of every Central Act and has to be read in such Act unless specifically excluded. He placed strong reliance on the judgment in ***Kamla Prasad Khetan & Anr. v Union of India***<sup>12</sup> to contend that modification of an order passed earlier extending the tenure of a Director of Enforcement is permissible subject to the procedure prescribed under the Act for the original appointment being followed. The learned Solicitor General defended the order dated 13.11.2020 as being the result of valid exercise of power on the basis of a recommendation made by the Committee which was constituted for appointment to the post of Director of Enforcement in accordance with the

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11 (2002) 3 SCC 481

12 1957 SCR 1052

provisions of Section 25 of the CVC Act. The second Respondent has been supervising very important investigations which are at a crucial stage and the Committee was of the opinion that his continuance for a period of one more year was crucial. The learned Solicitor General further submitted that there are no allegations made against the discharge of duties by Respondent No.2. He contended that the question of malice in law does not arise for consideration in this case. The extension of the tenure of the second Respondent is the result of *bona fide* exercise of power for germane considerations. Mr. P. S. Narasimha, learned Senior Counsel appearing for the Central Vigilance Commission adopted the arguments of the learned Solicitor General of India and argued that extension of the tenure of the second Respondent was not made on the whims and fancies of an individual but on the recommendations made by a High Level Committee constituted under the statute. No motives have been imputed against the members of the Committee who have taken into account all relevant material to conclude that the extension of the tenure of the second Respondent is in public interest.

**7.** As we propose to deal with the contentions raised by the Petitioner on their merits, we are not inclined to

adjudicate the preliminary objection taken by the learned Solicitor General regarding maintainability of the Writ Petition at the behest of the Petitioner.

**8.** The statement of objects and reasons of the CVC Act refers to an independent Committee constituted by the Government in September, 1997 comprising Sh. B. G. Deshmukh, Sh. S.V. Giri and Sh. N. N. Vohra to suggest measures for strengthening the agencies involved in anti-corruption activities, inter alia, as part of its efforts against corruption. The report of the Committee was circulated by the Union of India, according to which the Director of Enforcement shall have a minimum tenure of two years. In case of pre-mature transfer of the Director of Enforcement, the Selection Committee headed by the Central Vigilance Commissioner shall make suitable recommendations to Appointments Committee of the Cabinet. The statement of objects and reasons further refers to a judgment of this Court in **Vineet Narain** (supra) by which a recommendation of the Independent Review Committee relating to the minimum tenure of two years for Director of Enforcement was approved. It was held in **Vineet Narain** that the Director of Enforcement shall have a minimum tenure of two years and that premature transfer for any extraneous reason shall be

approved by the Selection Committee headed by the Central Vigilance Commissioner. Section 25 of the CVC Act pertaining to the appointments of the officers of Directorate of Enforcement reads as thereunder: -

*"25. Notwithstanding anything contained in the Foreign Exchange Management Act, 1999 or any other law for the time being in force,—*

*(a) the Central Government shall appoint a Director of Enforcement in the Directorate of Enforcement in the Ministry of Finance on the recommendation of the Committee consisting of—*

*(i) the Central Vigilance Commissioner — Chairperson;*

*(ii) Vigilance Commissioners — Members;*

*(iii) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government — Member;*

*(iv) Secretary to the Government of India in-charge of the Ministry of Personnel in the Central Government — Member;*

*(v) Secretary to the Government of India in-charge of the Department of Revenue, Ministry of Finance in the Central Government — Member;*

*(b) while making a recommendation, the Committee shall take into consideration the integrity and experience of the officers eligible for appointment;*

(c) no person below the rank of Additional Secretary to the Government of India shall be eligible for appointment as a Director of Enforcement;

(d) a Director of Enforcement shall continue to hold office for a period of not less than two years from the date on which he assumes office;

(e) a Director of Enforcement shall not be transferred except with the previous consent of the Committee referred to in clause (a);

(f) the Committee referred to in clause (a) shall, in consultation with the Director of Enforcement, recommend officers for appointment to the posts above the level of the Deputy Director of Enforcement and also recommend the extension or curtailment of the tenure of such officers in the Directorate of Enforcement;

(g) on receipt of the recommendation under clause (f), the Central Government shall pass such orders as it thinks fit to give effect to the said recommendation."

**9.** In so far as the Director of Enforcement is concerned, the appointment is on the recommendation of the Committee constituted by the Central Government. The eligibility for appointment of Director of Enforcement is that a person shall be holding at least the rank of Additional Secretary to the Government of India. Section 25 (d) provides that a Director

of Enforcement shall continue to hold office for a period of not less than two years from the date on which he assumes the office. According to Section 25 (e), the Director of Enforcement shall not be transferred except with the previous consent of the Committee. It is no doubt true, as contended on behalf of the Petitioner, that extension or curtailment of tenure is provided in Section 25 (f) in respect of officers other than that of the Director of Enforcement. The procedure and other conditions of service mentioned in Section 25 are notwithstanding anything contained in the Foreign Exchange Management Act, 1999 or any other law for the time being in force.

**10.** At this stage, it is relevant to refer to the Fundamental Rule 56 which has been relied upon by the Petitioner to buttress the submission that there cannot be any extension of service after a person holding a civil post under the Union of India has attained the age of superannuation. Fundamental Rule 56 reads as follows:-

***“Extracts of provisions in Fundamental Rule 56”***

*F.R. 56(a) Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:*

*Provided that a Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years.*

*Provided further that a Government servant who has attained the age of fifty-eight years on or before the first day of May, 1998 and is on extension in service, shall retire from the service on expiry of his extended period of service.*

*Or on the expiry of any further extension in service granted by the Central Government in public interest, provided that no such extension in service shall be granted beyond the age of 60 years.*

*(b) A workman who is governed by these rules shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.*

*(bb) The age of superannuation in respect of specialists included in the Teaching, Non-Teaching and Public Health Subcadres of Central Health Service shall be 62 years.*

*" Provided that for the specialists included in the Teaching sub-cadres of the Central Health Service who are engaged only in teaching activities and not occupying administrative positions, the age of superannuation shall be sixty-five years:*

*Provided further that such specialists of the Teaching sub-cadres of Central Health Service who are occupying*

*administrative positions shall have the option of seeking appointment to the teaching positions in case they wish to continue in service up to sixty-five years."*

*(bbb) The age of superannuation in respect of nursing teaching faculty with M.Sc in Nursing in the Central Government Nursing Institutions shall be 65 years subject to the condition that they continue to function as faculty members after the age of 60 years.*

*(d) No Government servant shall be granted extension in service beyond the age of retirement of sixty years:*

*Provided that a Government servant dealing with budget work or working as a full-time member of a Committee which is to be wound up within a short period of time may be granted extension of service for a period not exceeding three months in public interest;*

*Provided further that a specialist in medical or scientific fields may be granted extension of service up to the age of sixty-two years, if such extension is in public interest and the grounds for such extension are recorded in writing:*

*Provided also that an eminent scientist of international stature may be granted extension of service up to the age of 64 years, if such extension is in public interest and the grounds for such extension are recorded in writing.*

*Provided also that notwithstanding anything contained in any rule, the Central Government may, if considered necessary in public interest so to do, give extension in service to a Cabinet Secretary in the Central Government for such period or periods as it may deem proper subject to the condition that his total term as such Cabinet Secretary does not exceed four years.*

*Provided also that the Central Government may, if it considers necessary in public interest so to do, give extension in service to the Defence Secretary, Home Secretary, Director, Intelligence Bureau, Secretary, Research and Analysis Wing and Director, Central Bureau of Investigation in the Central Government for such period or periods as it may deem proper on a case-to-case basis, subject to the condition the total term of such Secretaries or Directors, as the case may be, who are given such extension in service under this rule, does not exceed two years.*

*Provided also that notwithstanding anything contained in the fifth proviso, the Central Government may, if considers it necessary, in public interest, so to do, give an extension in service for a further period not exceeding three months beyond the said period of two years to the Home Secretary and the Defence Secretary.*

*Provided also that, the Central Government may, if considered necessary in public interest so to do, give extension of service to the Secretary, Department of Space and the Secretary, Department of Atomic Energy, for such period or periods as it may deem proper subject to a maximum age of 66 years.*

*Provided also that the Appropriate Authority shall have the right to terminate the extension of service before the expiry of such extension by giving a notice in writing of not less than three months in the case of a permanent or a quasi-permanent Government servant, or, of one month in the case of a temporary Government servant, or pay and allowances in lieu of such notice."*

- 11.** A perusal of the above Rule makes it clear that every Government servant shall retire on attaining the age of 60 years. Posts for which there can be extension beyond 60 years have been specifically mentioned in the Rule and there is no dispute that the post of Director of Enforcement is not mentioned in the Rule for which extension of service can be given. The contention of the Petitioner is that all Government servants are governed by Fundamental Rule 56 and except those holding posts for which an extension beyond 60 years is permissible, other Government servants cannot continue beyond the age of 60 years. The reason

behind the recommendation of the Independent Review Committee that the Director of Enforcement should be permitted to continue in the post for a minimum period of two years without any external influence, which was accepted in the judgment of **Vineet Narain** (*supra*) is because of the important duties he performs. A minimum period of service ensures security of tenure and would reduce chances of external influences and extraneous pressures.

**12.** Prescription of a minimum period of two years is pursuant to the directions issued by this Court in **Vineet Narain** (*supra*). The non-obstante clause in Section 25 gives overriding power to the said provision, notwithstanding anything contained in any other law for the time being in force. The minimum period of two years which is provided in Section 25 would operate notwithstanding the provisions contained in Fundamental Rule 56(a). In **Uday Babu Khalwadekar v. Union of India & Ors.**<sup>13</sup>, this Court dealt with the appointment of Shri Karnail Singh to the post of Director of Enforcement in conformity with Fundamental Rule 56 by not fixing his tenure for two years. He was directed to be continued only till the date of his superannuation. A Writ

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13 WP (C) of 757 of 2016

Petition was filed contending that he has a right to continue for a period of not less than two years from the date on which he assumes office. This Court by a judgement dated 30.01.2017 held that Section 25 has overriding effect over any other law for the time being in force. In any event, a statutory rule i.e. Fundamental Rule 56(a) cannot override a legislative enactment. In view thereof, this Court directed the Union of India to issue a fresh order of appointment in compliance of Section 25 (d) of the Act permitting Shri Karnail Singh to continue in office for a period of two years from the date on which he assumes office. We, therefore, hold that the initial appointment of second Respondent for a period of two years from 19.11.2018 which extends beyond the date of his superannuation in May, 2020 is in accordance with Section 25 of the CVC Act and cannot be said to be illegal.

**13.** The Petitioner contended that Section 25 (d) which postulates a tenure of two years for a Director of Enforcement cannot be interpreted to confer power on the Government to extend the tenure beyond two years. The Petitioner laid stress on Section 25 (f) which provides for extension or curtailment of the period of tenure of officers other than the Director of Enforcement and submitted that

the legislature did not intend the extension of the tenure of Director of Enforcement beyond a period of two years.

**14.** According to the Union of India, the object of Section 25 (d) is to ensure that the Director of Enforcement shall have a minimum period of two years as recommended by the Independent Review Committee and as directed by the judgement of this Court in **Vineet Narain's** case. Reliance was also placed on the word 'minimum' which was used in the report of the Committee and the judgement in **Vineet Narain**. The words 'not less than two years' cannot be read to mean 'not more than two years' and there is no fetter on the power of the Central Government in appointing the Director of Enforcement beyond a period of two years. Having examined the report of the independent review committee and the judgement of this Court in **Vineet Narain's** case, it is clear that the minimum period of two years provided in Section 25 (d) is to prevent extraneous pressure. Prescription of a minimum period of two years is to ensure that the Director of Enforcement is not transferred or shifted from the said post during the course of investigation of serious offences. There is no ambiguity in Section 25 (d) of CVC Act and the words 'not less than two years' simply mean a minimum of two years. There is no scope for reading

the words to mean not more than two years. Reading such a restriction would be contrary to the recommendations of the Independent Review Committee and the judgment of this Court in Vineet Narain. Curtailment of the tenure of a Director Enforcement would be detrimental to the interests of officers who are appointed to the post and have service of more than two years before they attain the age of superannuation. Therefore, we hold that a Director of Enforcement can be appointed for a period of more than two years by following the procedure prescribed under Section 25 of the CVC Act.

**15.** The question that remains to be answered is whether there can be extension of tenure of a person who has been appointed as a Director of Enforcement for a period of two years and who has attained the age of superannuation in the interregnum i.e. before the expiry of two years. We have already held that the initial appointment of the second Respondent cannot be termed to be illegal and that he had a right to continue till 18.11.2020 by virtue of his appointment for a period of two years. For all practical purposes, he should be treated as the Director of Enforcement till that particular date he was holding an office which is not below

the rank of an Additional Secretary to the Government of India. Therefore, he was eligible for extension of tenure.

**16.** We proceed to deal with the pivotal point which is the source of power for extension of the tenure of Respondent No.2. According to the Union of India, extension can be ordered by resorting to Section 21 of the General Clauses Act in the absence of specific provision in the CVC Act. On the other hand, the contention of the Petitioner is that Section 21 of the General Clauses Act has no application to Section 25 of the CVC Act.

**17.** Section 21 of the General Clauses Act reads as follows:-

*“21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.— Where, by any [Central Act] or Regulations a power to [issue notifications,] orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any [notifications,] orders, rules or bye-laws so [issued].”*

**18.** The object of the General Clauses Act is to shorten the language of Central Acts, to provide as far as possible for uniformity of expression in Central Acts by giving definitions

of a series of terms in common use, to state explicitly certain convenient rules for the construction and interpretation of Central Acts and to guard against slips and oversights by importing into every Act certain common forms and clauses, which otherwise ought to be inserted expressly in every Central Act. In other words, the General Clauses Act is a part of every Central Act and has to be read in such Act unless specifically excluded<sup>14</sup>.

**19.** In ***Kamla Prasad Khetan*** (supra), this Court was concerned with a notification that amended the period of authorization to take over the management of a sugar mill from a period of one year to two years. It was held that the power to issue an order under the Central Act includes the power to amend an order, as provided by Section 21 of the General Clauses Act. However, the power is subject to the verification of a very important qualification that it is exercisable in the like manner and subject to the like sanction and conditions, if any. This Court observed that Section 21 of the General Clauses Act embodies a rule of construction and that rule must have reference to the context and subject-matter of the particular statute to which it is being applied. An earlier judgment in ***Strawboard***

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14 State Of Punjab v. Harnek Singh (supra)

**Manufacturing Co. v. Gutta Mill Workers' Union** (supra) which was relied upon by the Petitioners was distinguished by the Constitution Bench in **Kamla Prasad Khetan's** case as not being applicable to the facts of the case. It is necessary at this stage, to examine the judgement of this Court in **Strawboard Manufacturing Co. v. Gutta Mill Workers' Union** (supra). An industrial dispute was referred by the State Government to the Labour Commissioner on 18.02.1950 directing that the award should be submitted before 05.04.1950. The award was made on 13.04.1950. The Government by a notification dated 26.04.1950 extended the time for making the award till 30.04.1950. This Court in **Strawboard Manufacturing Co.** (supra) held that the State Government did not have authority to extend the time as the adjudicator became functus officio on the expiry of the time fixed in the original order of reference and, therefore, the award passed was without jurisdiction and a nullity. It was observed in the said judgement that Section 21 of the UP General Clauses Act cannot have retrospective operation. The learned Senior Counsel for the Petitioner relied upon the judgement in **State of Madhya Pradesh v. Ajay Singh & Ors.** (supra). The question that arose for consideration in the said case is regarding replacement or substitution of the

existing Member for the purpose of reconstitution of a Commission under the Commissions of Inquiry Act, 1952 by invoking power under Section 21 of the General Clauses Act. Section 3 of the Commissions of Inquiry Act gives power to fill a vacancy in the office of a Member of the Commission. As the manner of filling up the office of a Member of the Commission is expressly provided by Section 3, power under Section 21 of the General Clauses Act cannot be invoked to enlarge the government's power to reconstitute the commission in a manner other than that provided in the Commissions of Inquiry Act. In the said background, this Court held that the rule of construction embodied in Section 21 of the General Clauses Act cannot apply to the provisions of the Commissions of Inquiry Act relating to reconstitution of a Commission constituted thereunder since the subject-matter, context and effect of such provisions are inconsistent with such application. This Court examined the applicability of Section 21 of the General Clauses Act to Section 10 (1) of the Industrial Disputes Act, 1947 in ***State of Bihar v. D. N. Ganguly & Ors.*** (supra). It was held therein that there is no power conferred on the appropriate Government by Section 10 (1) of the Industrial Disputes Act to cancel or supersede a reference in relation to an Industrial Dispute pending

adjudication by the Tribunal. It was held that Section 21 of the General Clauses Act cannot vest such power by necessary implication. This Court was of the view that the rule of construction embodied in Section 21 of the General Clauses Act can apply to the provision of a statute only where the subject matter, context and effect of such provisions are in no way inconsistent with such application.

The learned Senior Counsel for the Petitioner relied upon the judgment in ***Kazi Lhendup Dorji v. Central Bureau of Investigation & Ors.*** (supra) in support of his submission that Section 21 of the General Clauses Act is not applicable to Section 25 of the CVC Act. The permissibility of withdrawal of the consent given by the State Government under Section 6 of the Delhi Special Police Establishment Act, 1946 was the subject matter of dispute in the said case.

This Court was of the opinion that Section 21 of the General Clauses Act does not give the power to issue an order having retrospective operation. It was observed therein that an order revoking an earlier order giving consent under the Delhi Police Special Establishment Act can only have prospective operation and would not affect matters in which action has been initiated prior to the issuance of the order of revocation. It is relevant to point out that this Court was of

the view that it was not necessary to decide the question whether Section 21 of the General Clauses Act can be invoked in relation to consent given under Section 6 of the Delhi Police Special Establishment Act.

**20.** We have already held that Section 25 (f) of the CVC Act has to be read as the tenure of office of the Director of Enforcement is for a minimum period of two years. There is no proscription on the Government to appoint a Director of Enforcement beyond a period of two years. The reasons for fixing the tenure for a minimum period of two years have been discussed in the earlier paragraphs. We are not in agreement with the submissions made by the learned Senior Counsel for the Petitioner that extension of tenure for officers above the rank of Deputy Director of Enforcement provided in sub-Section (f) of Section 25 has to be read as a bar on the power of the Government to extend tenure of the Director of Enforcement. As the tenure of appointment of Director of Enforcement is not a maximum period of two years, a person can be appointed as Director of Enforcement for a period of more than two years. If the Government has the power to appoint a person as Director of Enforcement for a period of more than two years, Section 25 of the CVC Act cannot be said to be inconsistent with Section 21 of the General

Clauses Act. Following the dictum of this Court in ***State of Punjab v. Harnek Singh*** (supra) in which it was held that General Clauses Act has to be read into all Central Acts unless specifically excluded, we are of the considered view that the rule of construction embodied in Section 21 of the General Clauses Act has reference to the context and subject matter of Section 25 of the CVC Act. The judgement of the Constitution Bench of this Court in ***Kamla Prasad Khetan*** (supra) is applicable to the facts of this case and the judgements relied upon by the Petitioner which are referred to above do not have any application to the facts of this case.

**21.** The Petitioner contended that the impugned order of extension of the tenure of the second Respondent is vitiated by malice in law by relying upon a judgement of this Court in ***Smt. S.R. Venkataraman v. Union of India & Anr.*** (supra). In the said judgement, it was held by this Court that any exercise of discretionary power for an unauthorised purpose would be an abuse of power. It is relevant to note that there is no allegation that the power of extension of tenure was exercised for any unauthorised purpose. We are not in agreement with the learned Senior Counsel for the Petitioner that there is malice in law.

**22.** The material on record indicates that the extension of service of the second Respondent was pursuant to the recommendations made by the Committee constituted under Section 25 (a) of the CVC Act. One of the conditions of Section 21 is that the power has to be exercised in the like manner and subject to like sanction. Amendment was made to the earlier order of appointment by the Committee after complying with the conditions in Section 21 of the General Clauses Act.

**23.** The justification given by the Union of India for extension of the tenure of second Respondent is that important investigations are at a crucial stage in trans-border crimes. The decision to extend the tenure of the second Respondent is pursuant to the recommendation made by the high-powered committee. Though we have upheld the power of the Union of India to extend the tenure of Director of Enforcement beyond the period of two years, we should make it clear that extension of tenure granted to officers who have attained the age of superannuation should be done only in rare and exceptional cases. Reasonable period of extension can be granted to facilitate the completion of ongoing investigations only after reasons are recorded by the Committee constituted under Section 25 (a) of the CVC

Act. Any extension of tenure granted to persons holding the post of Director of Enforcement after attaining the age of superannuation should be for a short period. We do not intend to interfere with the extension of tenure of the second Respondent in the instant case for the reason that his tenure is coming to an end in November, 2021. We make it clear that no further extension shall be granted to the second Respondent.

**24.** Subject to the observations made above, the Writ Petition is dismissed.

.....J.  
[ L. NAGESWARA RAO ]

.....J.  
[ B. R. GAVAI ]

**New Delhi,  
September 08, 2021.**