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### 1. On the jurisdiction of the CBI

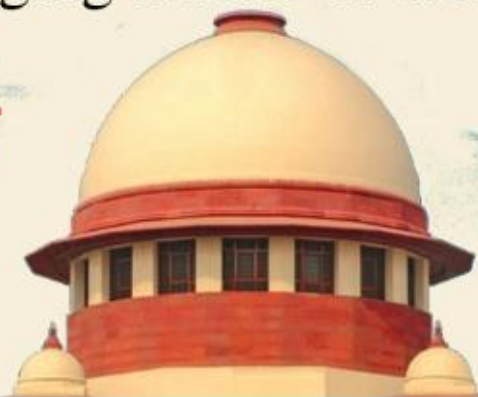
#### Why in News?

The Supreme Court on July 10 upheld the maintainability of the West Bengal government's suit accusing the Union government of "constitutional overreach" by employing the Central Bureau of Investigation (CBI) to register and investigate cases in the State despite its withdrawal of general consent on November 16, 2018.

The Supreme Court Bench rejected the Centre's preliminary objections that it was wrongly made a defendant in the suit as it did not control the CBI, which was an "independent agency." Perusing various provisions of the Delhi Special Police Establishment (DSPE) Act, 1946, under which the CBI functions, the Bench concluded "the very establishment, exercise of powers, extension of jurisdiction, the superintendence of the DSPE [Act], all vest with the Government of India." Accordingly, the Court ruled that the suit discloses a valid cause of action and must be heard on merits. It posted the next hearing on August 13.

'Establishment, extension of jurisdiction, superintendence of DSPE vests with GOI'; West Bengal's suit alleging misuse of CBI by Union maintainable

**SUPREME COURT**



**Justice B.R. Gavai · Justice Sandeep Mehta**

#### What is general consent?

Under Section 6 of the DSPE Act, the CBI is required to obtain consent from the concerned State government before initiating an investigation within its jurisdiction.

This permission is crucial since "police" and "public order" are subjects that fall within the State List under the seventh schedule of the Constitution. However, no such prior consent is necessary in Union territories or railway areas. General consent is given by States to facilitate the agency's seamless investigation into corruption charges against Central government employees in their territories.

However, since 2015, several States such as Chhattisgarh, Jharkhand, Kerala, Mizoram, Punjab, Rajasthan, Telangana, Meghalaya and West Bengal have revoked their general consent alleging that the Centre is misusing the federal agency to unfairly target the Opposition. In the absence of such an omnibus consent, the CBI is unable to register any fresh cases in these States without the explicit permission of the respective State governments.

### **What does the case filed by the West Bengal government allege?**

In August 2021, the West Bengal government filed an original suit under Article 131 of the Constitution arguing that the actions of the Union government and the involvement of the CBI in the State infringed upon its sovereignty. The suit highlighted that despite the withdrawal of general consent for CBI investigations by the Trinamool Congress government on November 16, 2018, the agency proceeded to register 12 new cases. Deeming this to be a "constitutional overreach," the State sought the annulment of these 12 cases and a restraint on the agency from lodging any further cases.

### **What was the Union government's argument?**

Solicitor-General Tushar Mehta, appearing for the Union government, pressed the Court to dismiss West Bengal's suit by raising preliminary objections to its maintainability. He pointed out that original suits under Article 131 of the Constitution exclusively involve the Union and States as parties. "It is the CBI which has registered the cases in question. But the CBI is not a defendant in this suit, and it cannot be made one, as the CBI is not a 'State' under Article 131," Mr. Mehta contended.

He further argued that the CBI was an "independent agency" since it did not function under the direct control of the Union government. "The Union does not supervise the registration of offences or investigation or closure or filing of chargesheet or conviction or acquittal of cases by the CBI," he reasoned. However, later in the proceedings, Mr. Mehta finally conceded that the agency cannot initiate any investigation without the express authorisation of the Union government under Section 5 of the DSPE Act.

On the contrary, senior advocate Kapil Sibal highlighted that the case extended beyond the Centre's control over the CBI to the fundamental question of whether the agency could disregard a specific notification issued by the West Bengal government in 2018, withdrawing its consent. Mr. Sibal asserted that once a State grants and then withdraws its consent, the CBI lacks jurisdiction to exercise its powers within that State.

### **What did the verdict state?**

The Court observed that a bare perusal of the provisions of the DSPE Act reveals that right from the constitution of the CBI, the classes of offences which are to be investigated by it, to its administration and powers, it is the "Central government that it is vitally concerned with."

Under Section 4 of the DSPE Act, except the offences under the Prevention of Corruption Act, in which the superintendence will be with the Central Vigilance Commission, the superintendence of the DSPE in all other matters would vest with the Central government. The judge also reminded the Centre that Section 6 of the DSPE Act mandates the prior consent of the State government to a CBI probe within its jurisdiction.

While the Court recognised that the CBI would always be entitled to investigate offences independently, it underscored that this autonomy “would not water down” its administrative control and superintendence that vests with the Centre. It thus proceeded to conclude that the Solicitor General’s argument that the CBI is an “independent agency” holds no water.

The verdict, however, clarified that these observations were only made to meet the preliminary objections raised by the Union government and would not have any bearing on the merits of the suit.

Relevance: GS Prelims & Mains Paper II; Governance

Source: The Hindu

## 2. Puja Khedkar controversy: What are the rules governing civil servants

### Why in News?

The Centre recently constituted a single-member committee under the Department of Personnel and Training (DoPT) to examine all documents submitted by probationary IAS officer Puja Khedkar to secure her candidature in the civil services.



Khedkar secured a rank of 821 in the 2022 UPSC Civil Services Examination, and was allotted the Indian Administrative Service (IAS) under the Other Backward Classes (OBC) and Physically Handicapped (PH) quotas. Questions have been raised about her appointment under these categories.

Khedkar also faces multiple allegations of misconduct, from seeking special privileges she is not entitled to as a probationer and “occupying” the ante chamber of the District Collector’s office, to using an unauthorised red-blue beacon on her private car, a luxury Audi sedan which she claims to have received as a “gift”.

In light of this controversy, the Maharashtra government on July 8 decided to transfer Khedkar from Pune to Washim.

### Applicable Rules

Khedkar's actions as a civil servant are governed primarily by two rules: the All India Services (Conduct) Rules, 1968, and the Indian Administrative Service (Probation) Rules, 1954. What do these rules say?

### **Rules on 'integrity' of services**

All IAS, Indian Police Service (IPS) and Indian Forest Service officers are governed by the AIS (Conduct) Rules from the time they are allotted their service, and begin training.

AIS (Conduct) Rule 3(1) states: "Every member of the Service shall at all times maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the Service."

Rule 4(1) is more specific about what is "unbecoming". It states that officers must not use their "position or influence" to "secure employment for any member of his family with any private undertaking or NGO".

In 2014, the government added a few sub-rules. This included that officers should maintain "high ethical standards, integrity and honesty; political neutrality; accountability and transparency; responsiveness to the public, particularly to the weaker sections; courtesy and good behaviour with the public".

Also added were specific directions as to how officers must make decisions. They must do so "solely in public interest... declare any private interests relating to his public duties... not place himself under any financial or other obligations to any individual or organisation which may influence him... not misuse his position as civil servant and not take decisions in order to derive financial or material benefits for himself, his family or his friends...".

According to Rule 11(1), officers may accept gifts from "near relatives" or "personal friends" with whom they have "no official dealings", on occasions such as "weddings, anniversaries, funerals and religious functions". However, they must report (to the government) any gift whose value exceeds Rs 25,000. This threshold was last updated in 2015.

### **Rules for probationers**

There is an additional set of rules that govern the conduct of officers during their probation period, which lasts for at least two years after selection to the services. This includes the period of the officers' training at the Lal Bahadur Shastri National Academy of Administration (LBSNAA) in Mussoorie. At the end of two years, officers sit for an examination, after clearing which they are confirmed in their respective services.

During the probation period, officers draw a fixed salary and travel allowance. But they are not entitled to, as a right, a number of benefits that confirmed IAS officers receive. These include, among other things, an official car with a VIP number plate, official accommodation, an official chamber with adequate staff, a constable, etc.

Rule 12 gives the circumstances in which probationers can be discharged. These include, among other things, the central government finding the probationer "ineligible for recruitment" or "unsuitable to be a member of" the service; the probationer "wilfully"

neglecting her probationary studies or duties; and the probationer lacking in “qualities of mind and character” needed for the service.

The Centre holds a summary enquiry before passing an order under these rules — like the one that has been initiated against Khedkar by the DoPT. The committee will submit its report within two weeks.

### **Furnishing false information**

Since the batch of 1995, 27% seats in the services have been reserved for the OBC category. The PH reservation was introduced with the batch of 2006 — 3% seats in every category (General, OBC, SC, and ST) are reserved for the differently abled.

Despite her low rank, Khedkar was allotted IAS, India’s premier civil service, due to these quotas. However, if her OBC and PH certificates are proven to have been falsified, Khedkar stands to be discharged from service. Probationers are “discharged”, while confirmed officers are “dismissed”.

A DoPT circular from 1993 states: “Wherever it is found that a Government servant...had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in service...”. This is applicable even if the person in question is not a probationer, and has already been confirmed.

However, such a dismissal would likely be challenged in court, before the Central Administrative Tribunal (CAT), and the National OBC Commission — challenges which may drag on for years. In the interim, the officer may still continue to be in service.

Khedkar was previously embroiled in a legal battle at the CAT regarding her PH status. As per a CAT order dated February 23, 2023, UPSC had asked Khedkar to undergo a medical examination at the AIIMS, New Delhi in April 2022 but she sought a postponement citing a Covid-19 infection.

She did not arrive at the rescheduled examination as well, although she is learnt to have later submitted an MRI report from a private facility to support her claims. “Despite making multiple attempts by the duty officer in AIIMS to contact the applicant, no response was received from her. Therefore the percentage of visual disability could not be assessed,” the CAT order read.

Critics have pointed to Khedkar’s ostensibly well-to-do background to question her OBC (non-creamy layer) status. The OBC category is subdivided into the creamy and non-creamy layers, with only the latter benefiting from reservations in government services and institutions. The idea is to specifically benefit those OBC members who come from economically, socially, and educationally less privileged backgrounds. This determination is made based on the parents’ income, and occupational background.

For those whose parents work in the private sector, the current threshold to qualify for the non-creamy layer status is an income of under Rs 8 lakh annually. For those with parents who work in the public sector, income is not taken into account. Rather, as per DoPT rules, what

qualifies people to be in the creamy layer is either parent becoming a Group-A official before the age of 40, or both being Group-B officials with similar ranks.

Puja Khedkar's father, Dilip, is a retired Maharashtra Pollution Control Board officer, who is now in politics.

Relevance: GS Prelims & Mains Paper IV; Ethics

Source: Indian Express

### 3. SC to look into use of Money Bills to pass laws

## The contentious route

Some of the legislations passed as Money Bills in the Parliament include:

- Amendments to the Prevention of Money Laundering Act
- The Finance Act of 2017
- Aadhaar Act, 2016



**A Money Bill is a financial legislation that contains provisions exclusively related to revenue, taxation, government expenditures, and borrowing**

#### Why in News?

Chief Justice of India D.Y. Chandrachud on Monday agreed to list petitions challenging the Money Bill route taken by the Centre to pass contentious amendments in the Parliament.

#### The provisions

A Money Bill is deemed to contain only provisions dealing with all or any of the matters under clauses (a) to (g) of Article 110(1), largely including the appropriation of money from the Consolidated Fund of India and taxation. In other words, a Money Bill is restricted only to the specified financial matters.

The reference includes legal questions concerning amendments made from 2015 onwards in the Prevention of Money Laundering Act (PMLA) through Money Bills, giving the Enforcement Directorate almost blanket powers of arrest, raids, etc. Though the court had upheld the legality of the PMLA amendments, it left the question whether the amendments could have been passed as Money Bills to the seven-judge Bench.

Similarly, the case also raises questions about the passage of the Finance Act of 2017 as a Money Bill to alter the appointments to 19 key judicial tribunals.

Mr. Ramesh, a petitioner in this case, had argued that the 2017 Act was deliberately categorised as a Money Bill to “extend executive control over these institutions (tribunals) by altering the composition of the selection committees and vastly downgrading the qualifications and experience required to staff these bodies”.

The question of passage of laws after dressing them up as Money Bills had come up in the Aadhaar case too. However, the top court had, in a majority verdict in 2021, refused to review its 2018 judgment (K. Puttaswamy case) upholding the validity of the Aadhaar Act and its certification as a Money Bill.

Justice Chandrachud (as he was then) had delivered a dissenting opinion on the Review Bench in 2021. The two questions before the Review Bench had been whether the Lok Sabha Speaker’s decision to declare the proposed Aadhaar law as a Money Bill was “final”. The second, whether the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 was correctly certified as a ‘Money Bill’ under Article 110(1) of the Constitution.

Justice Chandrachud, in his dissent, had said the Review Bench ought to wait till the seven-judge Bench decided the larger questions on the Money Bill in the Rojer Mathew reference. But the majority had disagreed with him.

Relevance: GS Prelims & Mains Paper II; Governance

Source: The Hindu