



## C.B.I and Consent of States

### Why in News

Recently, the Supreme Court has held that once a **court takes cognisance** of a corruption case investigated by the CBI, it **cannot be set aside** for lack of the **State government's prior consent** for the probe against some of the accused, unless it is shown that it has **resulted in prejudice**.

### Key Points

#### ▪ Background:

- Two officials of Uttar Pradesh government had earlier contended in the **Allahabad High Court** that the general consent given by the State government was not enough, and **separate consent ought** to have been obtained prior to their being investigated.
  - The State of Uttar Pradesh has accorded a **general consent** for extension of powers and jurisdiction of the Members of DSPE, in the whole of State of UP for investigation of offences under the **Prevention of Corruption Act, 1988**.
  - However, **in case of public servants** under the state governments, **prior consent** is needed from the state concerned even after the general consent given by the state.
- The **Allahabad High Court** noted that the Uttar Pradesh government had granted **post facto (after the act is done) consent against** the two public servants. This very judgement of **Allahabad High Court** was challenged in the Supreme Court.
- **Supreme Court's Stand:**
  - It held that if the State had given a **general consent** to **CBI investigation** in a corruption case and **cognisance** had been taken by a court, the case **cannot be set aside** unless the public servants plead that prejudice has been caused to them on account of **non-obtaining of prior consent**.
  - Further the judges held that the case cannot be set aside unless the illegality in the investigation can be shown to have brought about miscarriage of justice.

#### ▪ Types of Consent Given by state government

- There are **two types of consent** for a probe by the CBI. These are: **general** and **specific**.
- When a state gives a **general consent (Section 6 of the Delhi Special Police Establishment Act)** to the CBI for probing a case, the agency is not required to seek fresh permission **every time** it enters that state in connection with investigation or for every case.
- When a general consent is withdrawn, CBI needs to seek **case-wise consent** for investigation from the concerned state government. If specific consent is not granted, the CBI officials will not have the power of police personnel when they enter that state.
- This hurdle impedes seamless investigation by the CBI. A general consent is given to facilitate that seamless investigation in a case of corruption or violence.

#### ▪ Issue of Withdrawal of general Consent by States:

- Recently it has been seen that various states like Andhra Pradesh and West Bengal governments have withdrawn their general consent as a result of tussle between Centre and States.
- **Impact of withdrawal:**
  - It means the CBI will not be able to register any fresh case involving a central government official or a private person stationed in the states who withdrew their

general consent, without getting case-specific consent.

- In simple terms withdrawal of general consent simply means that CBI officers will lose all powers of a police officer as soon as they enter the state unless the state government has allowed them.
- It will have no impact on investigation of cases already registered with CBI as old cases were registered when general consent existed.

### **Delhi Special Police Establishment Act**

- The Central Bureau of Investigation traces its origin to the **Special Police Establishment (SPE) which was set up in 1941 by the Government of India.**
- The functions of the SPE then were to investigate cases of bribery and corruption in transactions with the War & Supply Deptt. Of India during World War II.
- Even after the end of the War, the need for a Central Government agency to investigate cases of bribery and corruption by Central Government employees was felt.
- The Delhi Special Police Establishment Act was therefore brought into force in 1946. The CBI's power to investigate cases is derived from this Act.

**Source:TH**

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