

SYNOPSIS AND LIST OF DATES

The National Investigation Agency Act, 2008 [hereinafter referred to as the “**NIA Act**”] was passed by the Parliament in the year 2008 and was implemented on and from 31.12.2008. The Plaintiff – State of Chhattisgarh is filing the present suit seeking declaration from this Hon’ble Court that the NIA Act, in its present form and content, is unconstitutional and ultra vires to the Constitution of India.

The Plaintiff respectfully submits that the NIA Act is *ultra vires* to the Constitution of India and is beyond the legislative competence of the Parliament since the Act empowers the Defendant to create an agency for “investigation”, which, notwithstanding the NIA, is carried out by the State Police, which is a subject matter of the State under Entry – 2, List – II, Schedule 7.

The NIA Act, in its present form, not only takes away the power of conducting investigation by the plaintiff through Police but also confers unfettered discretionary and arbitrary powers on the defendant. Moreover, there are no rules governing the exercise of power which gives ample discretion to the

defendant to exercise its power at any juncture without providing any reason or justification for the same.

The provisions of the act leave no room of coordination and pre-condition of consent, in any form whatsoever, by the Central government from the State government which clearly repudiates the idea of state sovereignty as envisaged under the Constitution of India. The plaintiff submits that the scheme of NIA act is such that once brought in motion, it completely takes away the power of plaintiff to investigate the offences which have been categorised as scheduled offence under the NIA Act and which has been committed within the jurisdiction of the State.

The NIA Act, in its essence and spirit, is not only *ultra vires* to the Constitution of India but is also against the federal spirit as envisaged under our Constitutional scheme wherein both Centre and State are considered to be independent in their respective jurisdiction.

The List – II, i.e., the State List clearly covers “Police” as a subject matter under its Entry – 2. It is provided under the Code

of Criminal Procedure, 1973, that Police has the power to investigate offence(s). A holistic appreciation of the fact that “Police” was placed under List- II as the subject matter of State, with power to investigate, and equally significant fact that no such entry of “Police” or even any incidental or ancillary entry was provided in List 1 i.e., Centre List suggests that the framing of a legislation such as NIA Act by the Parliament, which creates an “investigation” agency having overriding powers over the “Police” of a State, was never the intention of the makers of the Constitution.

It is submitted that the Parliament has acted beyond its legislative competence in framing and enacting the NIA Act and hence, the NIA Act is *ultra vires* to the Constitution of India. Moreover, the NIA Act, in its present form and content, not only confers unbridled, uncontrolled and uncanalised power on the Central Government to act arbitrarily and whimsically against the spirit of federal structure and sovereignty of State, but also tramples the purpose and significance of Entry – II, List – II of Schedule 7.

31.12.2008

The Parliament enacted the National Investigation Agency Act, 2008 with an aim to

constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations and for matters connected therewith or incidental thereto. The Act was brought into force on 31.12.2008.

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The present suit is being filed before this Hon'ble Court seeking declaration that the National Investigation Agency, 2008, in its present form and substance, is beyond the legislative competence of the Parliament and is unconstitutional. In an alternative, the plaintiff seeks a declaration from this Hon'ble Court that Section 6, 7, 8 & 10 of the National Investigation Agency Act, 2008 are *ultra vires* to the Constitution of India and hence, the same be declared as unconstitutional.

**IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION
UNDER ARTICLE 131 OF THE CONSTITUTION OF INDIA
ORIGINAL SUIT NO. OF 2019**

IN THE MATTER OF:

A PLAINT UNDER ARTICLE 131 OF THE CONSTITUTION OF INDIA READ WITH ORDER XXIII, RULE 1, 2 AND 3 OF THE SUPREME COURT RULES, 2013 ON BEHALF OF THE STATE OF CHHATTISGARH

IN THE MATTER OF:

The Plaintiff herein is challenging the constitutional validity of the National Investigation Agency Act, 2008 on the ground that the legislation, as enacted in the year 2008, is beyond the legislative competence of the Parliament as it creates a 'police' at national level with overriding and unbridled power / authority which otherwise is the subject matter of State under List-II, Schedule 7 of the Constitution of India.

AND

IN THE MATTER OF:

STATE OF CHHATTISGARH
THROUGH ITS CHIEF SECRETARY
SECRETARIAT, RAIPUR
CHHATTISGARH

...PLAINTIFF

VERSUS

UNION OF INDIA
MINISTRY OF HOME AFFAIRS
THROUGH SECRETARY,
NORTH BLOCK
NEW DELHI

...DEFENDANT

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUSTICES OF THE HON'BLE SUPREME
COURT OF INDIA

The humble plaint of the Petitioners above named:

MOST RESPECTFULLY SHEWETH:-

1. The Plaintiff – State of Chhattisgarh humbly states as under:-

- a. The address of the Plaintiff for the purpose of service of notices and processes is that of its Advocate-On-Record, Sumeer Sodhi, Advocate-On-Record, 32, Ground Floor, Uday Park, South Extension II, New Delhi – 110049. The address of the Defendant(s) for the purpose of service of notice and other purposes are those indicated in the cause title.
- b. The reasons and concerns of the Plaintiff - State of Chhattisgarh for invoking the jurisdiction of this Hon'ble Court emanates from the passing of NIA Act by the

parliament. The plaintiff submits that the parliament has acted beyond its legislative competence as envisaged under the Constitution of India and categorised under Schedule 7 of the Constitution. The Plaintiff seeks to raise grounds which involve a clear dispute of legislative territory of the State and requires consideration of this Hon'ble Court, for the present case raises several issues and contentions involving interpretation of constitution.

c. The Plaintiff respectfully submits that the NIA Act is *ultra vires* to the Constitution of India and is beyond the legislative competence of the Parliament since the Act empowers the Defendant to create an agency for "investigation", which, notwithstanding the NIA, is carried out by the State Police, as it is a subject matter of the State under Entry – 2, List – II, Schedule 7 of the Constitution of India.

d. The Plaintiff respectfully submits that the NIA Act is *ultra vires* to the Constitution of India and is beyond the legislative competence of the Parliament since the Act empowers the Defendant to create an agency for

“investigation”, which, notwithstanding the NIA, is carried out by the State Police, which is a subject matter of the State under Entry – 2, List – II, Schedule 7.

e. The NIA Act, in its present form, not only takes away the power of conducting investigation by the plaintiff through Police but also confers unfettered discretionary and arbitrary powers on the defendant. Moreover, there are no rules governing the exercise of power which gives ample discretion to the defendant to exercise its power at any juncture without providing any reason or justification for the same.

f. The provisions of the act leave no room of coordination and pre-condition of consent, in any form whatsoever, by the Central government from the State government which clearly repudiates the idea of state sovereignty as envisaged under the Constitution of India. The plaintiff submits that the scheme of NIA act is such that once brought in motion, it completely takes away the power of a State to investigate the offences which have been categorised as scheduled offence under the NIA Act and

which has been committed within the jurisdiction of the State.

g. The NIA Act, in its essence and spirit, is not only *ultra vires* to the Constitution of India but is also against the federal spirit of wherein both Centre and State are considered to be independent in their respective jurisdiction are bound to respect the territorial sovereignty, so much as the constitution provides.

h. It is submitted that “Police” is a subject matter falling under Entry – 2, List – II i.e., State List in Schedule 7 and, as provided under the Code of Criminal Procedure, 1973, has the power to investigate offence(s). A holistic appreciation of the fact that “Police” was placed under List- II as the subject matter of State, with power to investigate, and equally significant fact that no such entry of “Police” or even any incidental or ancillary entry was provided in List 1 i.e., Centre List suggests that the framing of a legislation such as NIA Act by the Parliament, which creates an “investigation” agency

having overriding powers over the Police of a State, was never the intention of constitution framer.

- i. It is submitted that in pith and substance the NIA Act empowers the Central Government to create an agency for “investigation”, which otherwise is being carried out through Police, which is a subject matter of the State under Entry – 2, List – II, Schedule 7, and therefore the Parliament lacks legislative competence to enact the legislation on matters contained in List-II. It is relevant to highlight that the term “investigation” as defined under Section 2 (h) of the Code of Criminal Procedure, 1973 stipulates that “investigation includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf”. Therefore, it clearly suggests that the National Investigation Agency, as created under the NIA Act, is nothing but a “National Police” for conducting investigation even though the subject matter of framing legislation relating to “Police” is clearly a State subject as per Entry 2, List II, Schedule 7 of the Constitution of India.

j. The language of Section 6 (4), 6(6) of the NIA Act, the mandate of Section 7, 8 and 10 of the NIA Act is also contrary to the constitutional scheme of distribution of power, as enumerated under Schedule 7, since the matters arising within the territorial jurisdiction of any State which are generally investigated by Police, has been taken away and the meaning and purpose of Entry – II, List- II of Schedule 7 has been rendered otiose.

k. The combined reading of Section 6(4), 6(6), 7, 8 and Section 10 of the NIA Act dissolves the constitutional setup of division of powers since “Police” is completely a domain / subject matter of State under List – II of Schedule 7 and by taking away the power of investigation from the State Police or conferring discretion on the Central Government, whether to allow the State Police to investigate or not, as Section 10 suggest, is clearly a breach of the division of power model setup by the Constitution.

l. It is submitted that the enactment of NIA Act by the parliament and creation of an “investigative” agency

namely the National Investigation Agency, for investigating the scheduled offences committed in any particular State, is clearly an act of colourable legislation since by way of the said Act, the Parliament has effectively created a “National Police” which, in cases of investigation of scheduled offences, will have overriding control over the State Police and its investigation which is contrary to the scheme and intention of Distribution of Power as provided in Schedule – 7 of the Constitution of India.

2. CAUSE OF ACTION

The cause of action for filing the present suit has arisen pursuant to the enactment of National Investigation Act, 2008 and its date of enforcement i.e., 31.12.2008 and is continuing since then on each passing day. It is submitted that, in view of the facts and circumstances of the present case, the present suit is not barred by limitation.

3. JURISDICTION

This Hon’ble Court has the jurisdiction to adjudicate the present case under Article 131 of the Constitution of India since the

present dispute is arising between the Government of India and the State of Chhattisgarh. The correctness of this Court's judgment in the case of State of M.P. v. Union of India reported in (201) 12 SCC 268 has been doubted and referred to a larger bench in the case of State of Jharkhand v. State of Bihar reported in (2015) 2 SCC 431. The plaintiff states that the facts and submissions made hereinabove raise a dispute between the Plaintiff and the defendant relating to the investigation of offences within the territorial limits of the plaintiff by the NIA as created by the Defendant which in addition is an issue of law for which only this Court has the jurisdiction.

4. COURT FEES

Since the subject matter is incapable of valuation, a fixed court fee of Rs. is being deposited herewith.

5. The documents which have been annexed with the plaint are true copies of the document available with the plaintiff. The plaintiff also states that no other suit has been filed by the Plaintiff claiming similar relief.

6. PRAYER AND RELIEFS

In the facts and circumstances of the present case and in view of the submissions made hereinabove, the present plaintiff respectfully prays this Hon'ble Court to:

- a) Declare that the National Investigation Agency Act, 2008 is unconstitutional and ultra vires to the Constitution of India;
- b) IN THE ALTERNATIVE AND WITHOUT PREJUDICE TO PRAYER (A), declare that Section 6, 7, 8 & 10 of the NIA Act, 2008 as ultra vires to the Constitution of India;
- c) IN THE ALTERNATIVE AND WITHOUT PREJUDICE TO PRAYER (A) & (B), pass an appropriate order / direction to the defendant to frame appropriate rules / guidelines, in exercise of power conferred under Section 25 (1) of the NIA Act, for exercise of powers under Section 6 (4) & 6 (5) of the NIA Act, 2008.
- d) Pass any other order that this court may deem fit in the facts and circumstances of the case

SETTLED BY
Mr. Vivek K Tankha
Senior Advocate

Plaintiff / State of Chhattisgarh

Through

Sumeer Sodhi
Advocate On Record

Standing Counsel for the State of Chhattisgarh

New Delhi

Bar
and
Bench

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