

Supreme Court directed for installation of CCTV Systems at investigation agencies offices and police stations

The Hon'ble Supreme Court in the case of *Paramvir Singh Saini v. Baljit Singh & Others [Special Leave Petition (Criminal) No. 3543 of 2020 dated December 2, 2020]* directed installation of CCTV- Camera at investigation agencies offices and police stations.

Facts:

The Hon'ble SC vide Order dated April 3, 2018 in the case of *Shafhi Mohammad v. State of Himachal Pradesh [(2018) 5 SCC 311]*, directed that a Central Oversight Body ("COB") be set up by the Ministry of Home Affairs to implement the plan of action with respect to the use of videography in the crime scene during the investigation.

Further, the Court, while considering the directions issued in *D.K. Basu v. State of West Bengal & Others [(2015) 8 SCC 744]*, held that there was a need for further directions that in every State an oversight mechanism be created whereby an independent committee can study the CCTV camera footages and periodically publish a report of its observations thereon. The COB was further directed to issue appropriate instructions in this regard at the earliest.

Furthermore, the Court directed that the COB may issue appropriate directions from time to time so as to ensure that the use of videography becomes a reality in a phased manner, the first phase of which be implemented by July 15, 2018.

The Supreme Court, through various orders, asked the various Governments to submit compliance reports of the actions taken. The orders also inquired about the status of audio-video recordings of Section 161 of the Code of Criminal Procedure, 1973 ("CrPC") statements of the witnesses.

Issue:

Only 14 states had submitted their Compliance Affidavits and Action Taken Reports. Also, the majority of them failed to disclose the exact position of CCTV cameras in each Police Station. Further, the total number of CCTV cameras installed, their working condition and positioning, etc., failed to be mentioned in the reports submitted. The status of oversight committees in each state and union territory was also missing. Nothing substantial was observed to be done in this regard for over 2½ years since the Hon'ble SC's orders.

Held:

The Hon'ble SC in ***SLP(Criminal) No. 3543 of 2020 dated December 2, 2020*** held as under:

- Directed that either the Principal Secretary of the State or the Secretary, Home Department of the States/Union Territories of all States and Union Territories to file compliance affidavits within 6 weeks.
- Formation of COC at State and District levels. The State Level Oversight Committee ("**SLOC**") must consist of:
 - The Secretary/Additional Secretary, Home Department;
 - Secretary/Additional Secretary, Finance Department;
 - The Director General/Inspector General of Police; and
 - The Chairperson/member of the State Women's Commission.

And the District State Level Oversight Committee ("**DLOC**") must consist of:

- The Divisional Commissioner/ Commissioner of Divisions/ Regional Commissioner/ Revenue Commissioner Division of the District (by whatever name called);
 - The District Magistrate of the District;
 - A Superintendent of Police of that District; and
 - A mayor of a municipality within the District/ a Head of the Zilla Panchayat in rural areas.
- Duties of SLOC includes:
 - Directions passed by the Hon'ble SC are carried out;
 - Purchase, distribution and installation of CCTVs and its equipment;
 - Obtaining the budgetary allocation for the same;
 - Continuous monitoring of maintenance and upkeep of CCTVs and its equipment;
 - Carrying out inspections and addressing the grievances received from the DLOC; and
 - To call for monthly reports from the DLOC and immediately address any concerns like faulty equipment.
 - Obligations of DLOC
 - Supervision, maintenance and upkeep of CCTVs and its equipment;

- Continuous monitoring of maintenance and upkeep of CCTVs and its equipment;
 - To interact with the Station House Officer (“SHO”) as to the functioning and maintenance of CCTVs and its equipment;
 - To send monthly reports to the SLOC about the functioning of CCTVs and allied equipment and
 - To review footage stored from CCTVs in the various Police Stations to check for any human rights violation that may have occurred but are not reported.
- Directed States/Union Territories’ Finance Department to allocate adequate funds at the very earliest.
 - SHO of each police station must report to the DLOC for any faulty or malfunctioning equipment, which must be replaced immediately. The SHO must check the working condition and backup of data of the CCTVs regularly.
 - All Police Stations, investigative agencies must prominently display large posters in English, Hindi, and vernacular language about the coverage of the concerned premises by CCTV. The information must include the right to complain about human rights violations to the National/State Human Rights Commission, the Human Rights Court, or the Superintendent of Police. The directions passed, stated that the published information should further include that CCTV footage was to be preserved for a minimum of six months and that the victim had a right to have the same secured in the event of a violation of his human rights.
 - Opined that it was necessary that whenever there is the information of force being used at police stations resulting in severe injury or custodial deaths, persons must be free to complain for redressal. Further, mentioned setting up of Human Rights Court in every district of the country as stipulated in the Protection of Human Rights Act, 1993.
 - **The central government should ensure that such CCTV cameras are installed at all offices of central government agencies, also where interrogation of persons takes place. This includes offices of the CBI, NIA, ED, NCB, DRI, and SFIO, etc.**
 - The Court could then summon the CCTV camera footage concerning the incident for its safekeeping. This footage may then be made available to an investigation agency to process further the complaint made to it.
 - The next hearing of the case was listed to be on 27 January 2021.

Our comments:

This judgment of the Hon'ble Supreme Court is very powerful and much needed to prevent custodial torture and to ensure that there is fairness and no abuse of power during the investigation. Further, directions have been made applicable not only to police stations but to all the agencies which carry out interrogations and have power to arrest. **This includes offices of the CBI, NIA, ED, NCB, DRI, and SFIO, etc.**

Various courts have pronounced such judgments where the assesseees have been harassed by the Authorities by exceeding the scope of their powers, as below:

The Hon'ble Gujarat High Court in ***Paresh Nathalal Chauhan v. State of Gujarat [R/Special Civil Application No. 18463 of 2019 (dated December 24, 2019)]*** held that:

*“An action taken may be said to be in good faith if the officer is otherwise so empowered and he exceeds the scope of his authority. However, in a case like the present one **where the authorisation was for search and seizure of goods liable to confiscation, documents, books or things and the concerned officer converted it into a search for a person and an investigation, which is not otherwise backed by any statutory provision, it may be difficult to accept that such action was in good faith. Protection of such action under section 157 of the GST Acts may unleash a regime of terror insofar as the taxable persons are concerned.***

*29. It is clarified that this court does not condone any alleged illegal acts on the part of the petitioner and in case he has indulged in any illegalities, the law should take its own course. **However, the court found it necessary to pass the present order to curb any further abuse of powers in this manner by the authorities under the GST Acts.***”

Further, the Hon'ble Telangana High Court in ***M/s. Agarwal Foundries Private Limited Rama Towers and 3 others v. Union of India and 9 others [Writ Petition No.28268 of 2019 (dated November 6, 2020)]*** has held that:

“...our country has enacted the Protection of Human Rights Act, 1993 for protection of human rights in the country in fulfillment of its obligations as a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16.12.1966. Under this Act, there are provisions for constitution of a National Human Rights Commission and also State Human Rights Commissions and their powers are set out with clarity under the Act. Reference can also be made to Section 30 of the said Act which provides for

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specification of a Court of Session in each District to be a Human Rights' Court by the State Government so that offences arising out of violation of human rights are tried and disposed of speedily.

79. In view of this statutory regime already in place, it would be futile for the respondents to claim any liberty to torture or use physical violence during the course of search, investigation or interrogation under the CGST Act, 2017 against persons suspected of tax evasion like the petitioners or their employees.

...The respondents cannot contend that they will interrogate the persons suspected of committing any tax evasion as per their sweet will forceably keeping them in their custody for indefinite period. If it is done, it has to be construed as informal custody and the law relating to an accused in custody has to be expressly or impliedly applied."

Therefore, monitoring the authorities through CCTV is an important step towards combating torture and abuse of power but its effectiveness is contingent on broader reforms and there is a need to ensure robust implementation of this order and at the same time fill the gaps so that such incidents are curtailed.

Relevant Provision under Central Goods and Services Tax Act, 2017 ("CGST Act"):

Section 67 of the CGST Act:

"Power of inspection, search and seizure-

67. (1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

*(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:
Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.*

(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the

amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.”

Section 69 of the CGST Act:

“Power to arrest.

69. (1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.

(2) Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.”

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