

## Kazilhendup Dorji vs Central Bureau Of Investigation on 29 March, 1994

**Equivalent citations: 1994 SCC, SUPL. (2) 116 JT 1994 (3) 140, 1994 AIR SCW 2190, (1994) 3 SCR 201 (SC), (1994) 2 CURCRIR 379, 1994 SCC (SUPP) 2 116, (1994) 3 CHANDCRIC 63, (1994) 54 DLT 329, (1994) 2 RECCRIR 553, 1994 UJ(SC) 2 302, (1994) 2 ALLCRILR 228, (1994) 3 JT 140 (SC), 1994 SCC (CRI) 873**

**Author: S.C. Agrawal**

**Bench: S.C. Agrawal, B.P. Jeevan Reddy, M.K Mukherjee**

PETITIONER:  
KAZILHENDUP DORJI

Vs.

RESPONDENT:  
CENTRAL BUREAU OF INVESTIGATION

DATE OF JUDGMENT 29/03/1994

BENCH:  
AGRAWAL, S.C. (J)  
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AGRAWAL, S.C. (J)  
JEEVAN REDDY, B.P. (J)  
MUKHERJEE M.K. (J)

CITATION:  
1994 SCC Supl. (2) 116 JT 1994 (3) 140  
1994 SCALE (2) 428

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by S.C. AGRAWAL, J.- This writ petition filed under Article 32 of the Constitution raises the question whether it is permissible to withdraw the consent

given by the State Government under Section 6 of the Delhi Special Police Establishment Act, 1946 (hereinafter referred to as the 'Act') whereby a member of the Delhi Special Police Establishment (DSPE) was enabled to exercise powers and jurisdiction for the investigation of the specified offences in any area in the State and, if so, what is the effect of such withdrawal of consent on matters pending investigation on the basis of such consent on the date of withdrawal.

2.The Act was enacted to make provision for the constitution of a special police force in Delhi for the investigation of certain offences in the Union Territories, for the superintendence and administration of the said force and for the extension to other areas of the powers and jurisdiction of members of the said force in regard to the investigation of the said offences. DSPE constituted under the said Act is now known as the Central Bureau of Investigation (CBI). Sections 5 and 6 of the Act read as under:

"5. (1) The Central Government may by order extend to any area (including Railway areas) in a State, not being a Union Territory the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under Section 3.

(2)When by an order under sub-section (1) the powers and jurisdiction of members of the said police establishment are extended to any such area, a member thereof may, subject to any orders which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of the police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.

(3)Where any such order under sub-section (1) is made in relation to any area, then, without prejudice to the provisions of sub-

section (2), any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer-in-charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station.

6.Nothing contained in Section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union Territory or railway area, without the consent of the Government of that State."

3.By his letter dated 20-10-1976, addressed to the Deputy Secretary to the Government of India, Department of Personnel and Administrative Reforms, the Chief Secretary to the Government of Sikkim conveyed the consent of the Government of Sikkim under Section 6 of the Act to the members of the DSPE in exercising powers and jurisdiction on the whole of the State of Sikkim for the investigation of the offences punishable under various provisions of the Indian Penal Code

specified therein as well as offences under the Prevention of Corruption Act, 1947. Similar consent in respect of offences under other enactments was conveyed by letter of the Chief Secretary, Government of Sikkim, dated 10-7-1979 and the orders of the Government of Sikkim dated 24-12-1983, 28-6-1984 and 10-12-1984.

4. Respondent 4 was the Chief Minister of Sikkim during the period 1979 to 1984. He ceased to be the Chief Minister on 11-5-1984. On 26-5-1984, a case [RC.5/84-CIU(A)] was registered by the CBI for offences punishable under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947. The allegations, in brief, were that Respondent 4, while acting as the Chief Minister of the State of Sikkim and thus being a public servant, had acquired assets disproportionate to his known sources of income. On 7-8-1984, another case [RC.8/84-CIU(A)] was registered by CBI for offences punishable under Section 120- B IPC and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947, against Respondent 4 and others. The allegations, in brief, were that Respondent 4 and Shri P.K. Pradhan, the then Secretary Rural Development Department, Government of Sikkim, by corrupt or illegal means or by otherwise abusing their position as public servants in conspiracy with other persons caused pecuniary advantage to the private parties and the corresponding loss to the Government of Sikkim and further that these persons entered into a criminal conspiracy with other private persons and awarded contracts to the tune of Rs 1,62,31,630 to the private parties for implementing Rural Water Supply Scheme under the Minimum Needs Programme during 1983-84 on higher rates and had ignored the recommendations of the concerned Rural Development Department officials on this point. After registering these two cases CBI started investigation and while the matters were under investigation Respondent 4 again became the Chief Minister of Sikkim in March 1985. By notification dated 7-1-1987, when Respondent 4 was the Chief Minister of Sikkim, it was notified that all consents of or on behalf of the State Government under letters dated 20-10-1976 and 10-7-1979 and orders dated 24-12-1983, 28-6-1984 and 10-12-1984 for investigation of offences by CBI under Section 6 of the Act, are withdrawn and stand cancelled with immediate effect. In spite of requests made by officials of the Government of India in their letters dated 17-10-1988, 12-12-1988 and 10-2-1989 and the Ministers of State in the Ministry of Personnel, Public Grievances and Pensions in letters dated 9-3-1989 and 16-9-1992, the Government of Sikkim did not agree to permit investigation by CBI in respect of cases under the Prevention of Corruption Act and declined to give consent for such investigation. As a consequence of the notification dated 7-1-1987, CBI suspended further action in the aforementioned two cases registered against Respondent 4. The petitioner, who happens to be a former Chief Minister of Sikkim, has filed this writ petition, by way of public interest litigation, wherein he has sought various reliefs including the quashing of the notification dated 7-1-1987. The petitioner has submitted that there is no provision under the Act which empowers the State Government to withdraw the consent which has been accorded and that impugned notification dated 7-1-1987, withdrawing the consent is in violation of the provisions of the Act.

5. In the counter-affidavit of Shri Parag Prakash, Deputy Secretary to Government of India, Ministry of Personnel, Public Grievances and Pensions, filed on behalf of Respondent 2, Union of India, it has been stated that after due investigation in case No. RC.5/84-CIU(A) the CBI had come to the conclusion that Respondent 4 had acquired assets worth Rs 16,49,434 which were disproportionate to his known sources of income and that a prima facie case for offences punishable under Sections

5(2) read with Section 5(1)(e) of the Prevention of Corruption Act was made out against him and that similarly after investigation of case No. RC.8/84- CIU(A) the CBI had come to the conclusion that a prima facie case for the offences punishable under Section 120-B IPC and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act was made out against Respondent 4 and Shri P.K. Pradhan, the then Secretary Rural Development Department, Government of Sikkim, and fifteen others for having caused pecuniary advantage to the private parties to the tune of Rs 3,07,230. It has been further stated in the said affidavit that before the CBI could file charge-sheet as provided under Section 173 CrPC in either of the aforesaid two cases in the court of law, the State of Sikkim, by its notification dated 7-1-1987, withdrew the consent earlier accorded by it to the members of the Special Police Establishment for investigation of offences in the State of Sikkim as provided under Section 6 of the Act and that in spite of various communications sent by Government of India to the Government of Sikkim requesting for restoration of the consent under Section 6 of the Act, the State Government had declined to give consent as requested. It has been further stated in the said affidavit that the withdrawal of the consent by the State Government through notification dated 7-1-1987, has caused grave injustice to the investigation of the aforesaid two cases registered by CBI because for want of said consent the reports under Section 173 CrPC could not be filed in the court of law. It has also been stated that the law, once set in motion by registering criminal cases, ought not be permitted to be stalled and the case must be allowed to reach its logical conclusion and that criminal justice requires that the investigating agency should be allowed to bring the result of investigation to the court of law by filing reports under Section 173 CrPC as required under law, notwithstanding the withdrawal of consent during pendency of investigation. It is also stated in the said affidavit that notification dated 7-1-1987, through which the consent was withdrawn, is prejudicial to the fair and free investigation by CBI and thus illegal and not tenable under the law and further that there is no provision in law for withdrawal of consent once accorded and that, in any case, in respect of cases already taken up for investigation or trial on the basis of a valid consent legally accorded by the State Government, there is no scope of withdrawing it in between and that notification dated 7-1-1987, deserves to be quashed in totality and certainly in respect of the cases already taken up for investigation by CBI.

6. A counter-affidavit has been filed by Shri K.A. Varadan, Chief Secretary, State of Sikkim, on behalf of Respondent 3, the State of Sikkim, but the said affidavit is confined to the question whether a meeting of the Cabinet was held on 19-5-1984 wherein, as asserted in the writ petition by the petitioner, it was decided that since Respondent 4 had acquired assets by illegal means the Central Government be requested to require CBI to institute complaints/file case against Respondent 4. In the said affidavit no reference has been made to the order dated 7-1-1987, whereby the consent granted under Section 6 of the Act was withdrawn as well as the legality of the said action.

7. Respondent 4 has also filed a counter-affidavit wherein he has alleged that the writ petition was politically motivated and further that the registration of cases by CBI against him was vitiated by mala fides and is part of a campaign of character assassination against him. In his counter-affidavit Respondent 4 has disputed that a meeting of the Cabinet was held on 19-5-1984, or a decision was taken empowering CBI to investigate the allegations of corruption against Respondent 4 and that the sanction to investigate offences by CBI under Section 6 of the Act was illegally granted which

had been properly withdrawn. Along with the said counter-affidavit Respondent 4 has placed on record (as Annexure VI) the notings in the file containing the opinions of the then Advocate General as well as the Chairman of the State Law Commission expressing the view that the consent given under Section 6 could be rescinded under Section 21 of the General Clauses Act, 1897.

8. Section 21 of the General Clauses Act, 1897 is in following terms:

"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 Regulation, 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, rule or bye-laws so issued."

9. Shri Ram Jethmalani, the learned Senior Counsel appearing for the petitioner, has urged that Section 21 of the General Clauses Act has no application to a consent given under Section 6 of the Act inasmuch as Section 21 of the General Clauses Act postulates conferment of the power to issue notifications, orders, rules, or bye-laws by any Central Act or Regulation and that Section 6 of the Act does not confer a power to issue a notification or order and that the consent given under Section 6 cannot be regarded as a notification or order. In this context, Shri Jethmalani has contrasted the provisions of Section 6 with Section 3 of the Act which prescribes that the "the Central Government may, by notification in the Official Gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment". Shri Jethmalani has pointed out that the original consent dated 20-10-1976, was contained in the letter of the Chief Secretary and was not in the form of a notification and so also was the consent contained in the letter dated 10-7-1979. Shri Jethmalani has also contended that even if Section 21 of the General Clauses Act is held to be applicable so as to permit withdrawal of consent given under Section 6, such withdrawal of consent cannot be related to an investigation which has started on the basis of consent granted earlier and that once the investigation has started Chapter XII of CrPC comes into play and the statutory powers vested in the CBI under the provisions of the Code have to be exercised and the exercise of said powers is not affected by a subsequent withdrawal of the consent. Shri Jethmalani has further contended that since the impugned notification for withdrawal of the consent was one in which Respondent 4 had a vital interest, the decision for such withdrawal should have been taken by the Governor in exercise of his personal discretion and not on the advice of the Council of Ministers and that in the present case the impugned notification was issued on the basis of advice of the Council of Ministers headed by Respondent 4, who was the Chief Minister at that time.

10. The learned Additional Solicitor General, appearing for Respondents 1 and 2, has also assailed the validity of the impugned notification and has urged that no action of any authority can be permitted to impede the course of criminal justice and that but for the impugned notification withdrawing the consent the CBI would have discharged its statutory obligations in the matter of investigation and prosecution of the accused persons.

11. Shri Hegde, the learned Senior Counsel appearing for the State of Sikkim, has assailed the validity of Section 6 of the Act on the ground that DSPE is a police force of the Union Territory and Parliament does not have the legislative competence to make a law providing for extension of powers and jurisdiction of members of a police force belonging to a Union Territory to any area outside the Union Territory.

12. Shri Parasaran, the learned Senior Counsel appearing for Respondent 4, has submitted that the writ petition is an abuse of the process of the court inasmuch as it is politically motivated and, in this context, he has invited our attention to the order passed by this Court on 5-5-1993, wherein it has been stated:

" Shri Jain strongly urged that the petitioner who was instrumental in the admission of Sikkim as a State in the Indian Union, is greatly exercised and troubled over the inaction of the CBI in investigating into certain charges against Respondent 4. It would appear that in 1987 there was a purported revocation of the sanction. If the revocation is valid, we are afraid, re-agitation of the matter at this distance of time by the petitioner would not be proper and would earn the criticism of amounting to an abuse of the process. But, Shri Jain would say that there is no power of revocation and the CBI must proceed on the assumption that none exists."

Shri Parasaran has also urged that there is inordinate delay in filing of the writ petition inasmuch as the FIR was registered as far back as in 1984 and the notification withdrawing the consent was issued in 1987 but the writ petition was filed in 1993, nearly six years after the passing of the impugned notification.

13. The contention urged by Shri Hegde about the legislative competence of Parliament to enact Sections 5 and 6 of the Act stands concluded by the decision of the Constitution Bench of this Court in *Advance Insurance Co. Ltd. v. Gurudasmal*<sup>1</sup> wherein the expression "State" in Entry 80 of List 1 in the Seventh Schedule to the Constitution has been construed to include "Union Territory" in view of the definition of "State" contained in Section 3(58) of the General Clauses Act and it has been held that members of police force belonging to the Union Territory can have their powers and jurisdiction extended to another State provided the Government of that State consents.

14. The submission of Shri Parasaran that the filing of the writ petition amounts to abuse of the process of court also does not merit acceptance. The counter-affidavit filed on behalf of Respondent 2, Union of India, shows that after due investigation of both the cases it has been found that prima facie case for offences under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 and offences under Section 120-B read with Section 5(2) and Section 5(1)(d) is made out and that if the impugned notification had not been issued the charge-sheet under Section 173 CrPC would have been filed by CBI. In these circumstances, merely because the petitioner happens to be a political rival of Respondent 4 it cannot be said that filing of this writ petition amounts to abuse of process of the court. The order of this Court dated 5-5-1993, only means that if the revocation is found to be valid re-agitation of the matter at this distance of time by the petitioner would not be proper and would earn the criticism of amounting to an abuse of the process. By the same order the

Court after noticing the contention of Shri R.K. Jain that there was no power of revocation and that CBI must proceed on the assumption that none exists, decided to issue notice to CBI in the first instance and on 1-10-1993, after examining the affidavit filed by Shri Ram Deo Pandey, Superintendent of Police, CBI, directed that notice be issued to other respondents. The order of this Court dated 5-5-1993, therefore, does not lend support to the contention that the filing of the writ petition amounts to abuse of the process.

15.As regards delay in filing of writ petition we find that after the issuance of the impugned notification in 1987, efforts were made by the Central Government during the period from 1988 to 1992 to persuade the Government of Sikkim to accord the necessary consent and when the said attempts failed, the petitioner moved this Court in 1993. Having regard to the seriousness of the allegations of corruption that have been made against a person holding the high public office of Chief Minister in the State which have cast a cloud on his integrity, it is of utmost importance that the truth of these allegations is judicially determined. Such a course would subserve public interest and public morality because the Chief Minister of a State should not function under a 1 (1970) 1 SCC 633 : (1970) 3 SCR 881 cloud. It would also be in the interest of Respondent 4 to have his honour vindicated by establishing that the allegations are not true. The cause of justice would, therefore, be better served by permitting the petitioner to agitate the issues raised by him in the writ petition than by non-suiting him on the ground of laches.

16.Coming to the contention urged by Shri Jethmalani on merits it may be mentioned that Section 21 of the General Clauses Act does not confer a power to issue an order having retrospective operation. [See *Strawboard Manufacturing Co. Ltd. v. Gutta Mill Workers' Union*<sup>2</sup> (SCR at pp. 447-48).] Therefore, even if we proceed on the basis that Section 21 of the General Clauses Act is applicable to an order passed under Section 6 of the Act, an order revoking an order giving consent under Section 6 of the Act can have only prospective operation and would not affect matters in which action has been initiated prior to the issuance of the order of revocation. The impugned notification dated 7-1-1987, has to be construed in this light. If thus construed it would mean that investigation which was commenced by CBI prior to withdrawal of consent under the impugned notification dated 7-1-1987, had to be completed and it was not affected by the said withdrawal of consent. In other words, the CBI was competent to complete the investigation in the cases registered by it against Respondent 4 and other persons and submit the report under Section 173 CrPC in the competent court. On that view of the matter, it is not necessary to go into the question whether the provisions of Section 21 of the General Clauses Act can be invoked in relation to consent given under Section 6 of the Act.

17.The writ petition is, therefore, allowed and it is declared that the notification dated 7-1-1987, withdrawing the consent given by the Government of Sikkim under letters dated October 20, 1976, and 10-7-1979 and orders dated 24-12-1983, 28-6-1984, and 10-12-1984, under Section 6 of the Act, operates only prospectively and the said withdrawal would not apply to cases which were pending investigation on the date of issuance of the said notification. The notification dated 7-1-1987, does not preclude the CBI from submitting the report in the competent court under Section 173 CrPC on the basis of the investigation conducted by it in RC.5/84-CIU(A) and RC.8/84-CIU(A).

18. No order as to costs.