

Supreme Court of India

Kazi Lhendup Dorji vs Central Bureau Of Investigation ... on 29 March, 1994

Equivalent citations: JT 1994 (3) SC 140, (1992) ILLJ 922 SC, 1993 (3) SCALE 347, 1994 Supp (2) SCC 116, 1994 3 SCR 201, 1990 Supp (3) SCR 1, 1994 (2) UJ 302 SC

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Bench: S Agrawal, B J Reddy, M Mukherjee

JUDGMENT S.C. Agrawal, J.

1. 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 (D.S.P.E.) 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. D.S.P.E. constituted under the said Act is now known as the Central Bureau of Investigation (CBI). Sections 5 & 6 of the Act read as under:

Section 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 an 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.

Section 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 October 20, 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 D.S.P.E. 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 July 10, 1979 and the orders of the Government of Sikkim dated December 24, 1983, June 28, 1984 and December 10, 1984.

4. Respondent No. 4 was the Chief Minister of Sikkim during the period 1979 to 1984. He ceased to be the Chief Minister on May 11, 1984. On May 26, 1984, a case [RC.5/84-CIU(A)] was registered by the C.B.I. 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 No. 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 August 7, 1984, another case [RC. 8/84-CIU(A)] was registered by C.B.I. for offence punishable under Section 120-B I.P.C. and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947, against respondent No. 4 and others. The allegations, in brief, were that respondent No. 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 need 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 C.B.I. started investigation and while the matters were under investigation respondent No. 4 again became the Chief Minister of Sikkim in March, 1985. By Notification dated January 7, 1987, when the respondent No. 4 was the Chief Minister of Sikkim, it was notified that all consents of or on behalf of the State Government under letters dated October 20, 1976 and July 10, 1979 and orders dated December 24, 1988, June 28, 1984 and December 10, 1984 for investigation of offences by C.B.I. 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 October 17, 1988, December 12, 1988 and February 10, 1989 and the Ministers of State in the Ministry of Personnel, Public Grievances and Pensions in letters dated March 9, 1989 and September 16, 1992, the Government of Sikkim did not agree to permit investigation by C.B.I. 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 January 7, 1987, C.B.I. suspended further action in the aforementioned two cases registered against respondent No. 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 January 7, 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 January 7, 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 No. 2, Union of India, it has been stated that after due investigation in case No. RC.5/84-CIU(A) the C.B.I. had come to the conclusion that respondent No. 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 C.B.I, had come to the conclusion that a prima facie case for the offences punishable under Section 120-B I.P.C. and Section 5(2) read with Section 5(i)(d) of the Prevention of Corruption Act was made out against respondent No. 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 C.B.I, could file charge-sheet as provided under Section 173 Cr. P.C. in either of the aforesaid two cases in the court of law, the State of Sikkim, by its Notification dated January 7, 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 January 7, 1987, has caused grave injustice to the investigation of the aforesaid two cases registered by C.B.I, because for want of said consent the reports under Section 173 Cr. P.C. 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 Cr.P.C. as required under law, notwithstanding the withdrawal of consent during pendency of investigation. It is also stated in the said affidavit that Notification dated January 7, 1987, through which the consent was withdrawn, is prejudicial to the fair and free investigation by C.B.I, 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 January 7, 1987, deserves to be quashed in totality and certainly in respect of the cases already taken up for investigation by C.B.I.

6. A counter-affidavit has been filed by Shri K.A. Varadan, Chief Secretary, State of Sikkim, on behalf of respondent No. 3, the State of Sikkim, but the said affidavit is confined to the question whether a meeting of the Cabinet was held on May 19, 1984 wherein, as asserted in the writ petition by the petitioner, it was decided that since respondent No. 4 had acquired assets by illegal means the Central Government be requested to require C.B.I, to institute complaints/file case against

respondent No. 4. In the said affidavit no reference has been made to the order dated January 7, 1987, whereby the consent granted under Section 6 of the Act was withdrawn as well as the legality of the said action.

7. Respondent No. 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 C.B.I, against him was vitiated by mala fides and is part of a campaign of character assassination against him. In his counter affidavit respondent No. 4 has disputed that a meeting of the Cabinet was held on May 19, 1984, or a decision was taken empowering C.B.I, to investigate the allegations of corruption against respondent No. 4 and that the sanction to investigate offences by C.B.I, under Section 6 of the Act was illegally granted which had been properly withdrawn. Alongwith the said counter affidavit respondent No. 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:

Section 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 notification, 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, 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 October 20, 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 July 10, 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 Cr. P.C. comes into play and the statutory powers vested in the C.B.I, under the provisions of the Code has 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 No. 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 Minister and that in the present case the impugned Notification was issued on the basis of advice of the Council of Ministers headed by respondent No. 4, who was the Chief Minister at that time.

10. The learned Additional Solicitor General, appearing for respondents Nos. 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 C.B.I, 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 D.S.P.E. 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 No. 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 May 5, 1993, wherein it has been stated:

Sri 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 C.B.I, in investigating into certain charges against respondent No. 4. It would appear that in 1987 there was a purported revocation of the sanction. If the revocation is valid, we are afraid, reagitation 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, Sri Jain would say that there is no power of revocation and the C.B.I, must proceed on the assumption that none exist.

Shri Parasaran has also urged that there is inordinate delay in filing of the writ petition inasmuch as the F.I.R. 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 *Management of Advance Insurance Co, Ltd. v. Shri Gurudasmal and Ors.*, wherein the expression "State" in Entry 80 of List I in the Seventh Schedule to the Constitution includes "Union, territory" in view of the definition of "State" contained in Section 3(58) of the General Clauses Act and 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

No. 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 Cr. P.C. would have been filed by C.B.I. In these circumstances, merely because the petitioner happens to be a political rival of respondent No. 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 May 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 C.B.I., must proceed on the assumption that none exists, decided to issue notice to C.B.I, in the first instance and on October 1, 1993 after examining the affidavit filed by Shri Ram Deo Pandey, Superintendent of Police, C.B.I., directed that notice be issued to other respondents. The order of this Court dated May 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 cloud. It would also be in the interest of respondent No. 4 to have his honour vindicated by establishing that the allegations are not true. The cause of justice would, therefore, be better served by permitted 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* [1963] SCR 489, pages 447-448. 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 January 7, 1987, has to be construed in this light. If thus construed it would mean that investigation which was commenced by C.B.I, prior to withdrawal of consent under the impugned Notification dated January 7, 1987, had to be completed and it was not affected by the said withdrawal of consent. In other words, the C.B.I, was competent to complete the investigation in the cases registered by it against respondent No. 4 and other persons and submit the report under Section 173 Cr. P.C. in the competent court. On that view of the matter, it 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 January 7, 1987, withdrawing the consent given by the Government of Sikkim under letters dated October 20, 1976, and July 10, 1979 and orders dated December 24, 1983, June 28, 1984, and December 10, 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 January 7, 1987, does not preclude the C.B.I, from submitting the report in the competent court under Section 173 Cr. P.C. 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.