

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 3172/2008 & CRL.M.A. 11721/2008(stay)

PROF. RAMESH CHANDRA Petitioner
Through Mr. M. Chandrashekar, Sr. Advocate
with Mr. Harsh K. Sharma and
Mr. P. Parasaran, Advocates.

versus

C.B.I. Respondent
Through Mr. Harish Gulati with
Mr. Anindiya Malhotra, Advocate for CBI.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

ORDER
25.03.2009

1. The challenge in this petition under Section 482 of the Code of Criminal Procedure (CrPC) 1973 is for quashing of FIR/R.C. No.DAI-23(A)/2000/CBI/ACB/New Delhi dated 3rd May 2000 and all proceedings consequent thereto.

2. The aforementioned RC was registered by the Central Bureau of Investigation (CBI) on 3rd May 2000 against the petitioner Prof. Ramesh Chandra. It was stated therein that the reliable information had been received by the CBI to the effect that R.K. Goel, IFS who was Member Secretary, Delhi Pollution Control Committee (DPCC) Delhi,

Prof. Ramesh Chandra, the then Head of the Department of Applied Chemistry, Delhi College of Engineering (DCE) and posted as Vice Chancellor, Chaudhary Charan Singh University (CCSU), Meerut, I. K. Kapila, Senior Environmental Engineer, DPCC, Smt. Seema, daughter of Prof. Ramesh Chandra and Asst. Environmental Engineer (AEE), DPCC and Ashish Goel, son of R.K. Goel and other unknown persons had during years 1997-99 entered into a criminal conspiracy with the object of dishonesty and fraudulently securing appointment/selection to the post of AEE for Smt. Seema in the DPCC as well as the admission of Ashish Goel in the DCE in B.E. (Civil) by abusing their respective official positions as public servants.

3. The DPCC by an advertisement dated 31st July 1997 invited applications for five posts of AEE. One post each was reserved for Scheduled Castes (SC), Scheduled Tribes (ST) and Other Backward Classes (OBC) and two for General Category candidates. The requisite qualification was either M.E. (Environmental Engineering) with one year's experience or 2nd Class B.E. in any discipline of Engineering with three years experience out of which one year's experience had to be in pollution control activity.

4. The RC proceeded to state that Smt. Seema who had appeared in the B.E. (Electronics) Final Examination from Bangalore University in

July 1994, did not clear some of the subjects. She qualified the B.E. exam only subsequently by appearing in the supplementary examination held in February 1995. Therefore at the time of making the application to the post of AEE, she was not eligible to apply for the post. She submitted her application by enclosing a forged mark-sheet of the Bangalore University dated 12th October 1994 showing that she had passed the examination held in July 1994. Her application was forwarded by the petitioner Prof. Ramesh Chandra with his own remarks and with his own attestation on the said forged mark-sheet. Similarly, a false experience certificate of M/s Agro Heat Engineers was produced wherein it was shown that Smt. Seema had worked as Production Engineer from 15th June 1994 to 30th November 1994 whereas her B.E. exam concluded during July 1994. This certificate was also attested by the petitioner Prof. Ramesh Chandra. In addition to the above, the petitioner Ramesh Chandra gave his own certificate regarding the experience of Smt. Seema strongly recommending her candidature and concealing the fact that she was his real daughter. The bio-data-cum-application dated 13th August 1997 of Smt. Seema was attested by the petitioner Prof. Ramesh Chandra. In it she had falsely stated that she had appeared in final semester of M.E. (E&C) and the result of the final semester was awaited.

5. Smt. Seema was not eligible for appointment to the post of AEE in

the DPCC in terms of her qualification and experience. It is stated that her appointment to the post was in furtherance of the criminal conspiracy between R.K. Goel and I.K. Kapila and other unknown persons. Likewise Ashish Goel s/o R.K. Goel had not even secured the minimum prescribed marks to get through in the entrance examination of DCE for admission in B.E. He was fraudulently selected in the B.E. (Civil) course in the said entrance examination held in 1999. Pursuant to the aforementioned criminal conspiracy Ashish Goel applied for revaluation in the Chemistry paper and Prof. Ramesh Chandra by abusing his official position as Head of the Department of Applied Chemistry got the marks in the Chemistry paper increased to such a level during revaluation as a result of which Ashish Goel secured admission in the B.E. course of DCE.

6. The RC further states that R.K. Goel, I.K. Kapila and other unknown persons by abusing their official position as public servants offered appointment to ineligible or less eligible candidates by accepting huge illegal gratification. This was done ignoring the claims of SC and ST candidates. Therefore, those posts were offered to ineligible candidates.

7. A charge sheet was filed in the aforementioned case on 8th June 2001. Prof. Ramesh Chandra was shown as the first accused, Smt.

Seema as the second accused, D.K. Aggarwal as the third accused. It was indicated under the name of Prof. Ramesh Chandra that he had not been arrested. The charge sheet showed that after the RC was registered, searches were conducted at the residence of Seema and many incriminating documents were seized from her residence. These included blank photocopies of the attested forged mark-sheets which were used for securing employment in DPCC, the experience certificate dated 30th November 1994 of Seema issued by D.K. Aggarwal, Proprietor of Agroheat Engineers, the blank letter head of Agro Heat Engineers, Experience-cum-No Objection Certificate dated 4th May 1998 issued by Prof. Ramesh Chandra in favour of Seema without mentioning that she was his daughter, the original degree of BE of Bangalore University dated 28th March 1996 certifying that Seema had passed the BE course and other documents.

8. The investigations revealed that Seema had failed in B.E., IV year (Electronics Engineering) Examination held in July and August 1994. This was evident from the mark-sheet of the said examination dated 12th October 1994. That mark-sheet was collected by the petitioner himself from the concerned college in Tumkur in Karnataka some time during October/November 1994. Seema took the supplementary examination in two subjects in February 1995. Her results were declared on 25th May 1995. She had passed both papers by securing 35

marks each. The consolidated mark-sheet was collected from the college concerned on 23rd January 1998 by Dr. M.K. Veeriah on behalf of the petitioner. Seema applied for the post of AEE in DPCC on 14th August 1997. In her CV she mentioned 1994 as the year of passing her B.E. This application was sent to the DPCC by the petitioner himself who wrote the address and the sender's name and signed on the cover of the envelope.

9. The minimum criteria for the post was B.E. with at least three years' experience out of which one year was required in pollution control activity. Since Seema had cleared her B.E. exam only in 1995, she obviously could not have had three years' experience as on the date of her applying for the post. To make up for this, Seema, Prof. Ramesh Chandra (the petitioner) and D.K. Aggarwal entered into criminal conspiracy and got the marks altered in the mark-sheet dated 12th October 1994 in 'Engineering Economics and Management' paper from AA (Absent) to 35 and in 'Probability and Information Theory' paper from 14 to 35. The total of 606 was changed to 667. The experience certificate of Seema issued by M/s Agro Heat Engineers for the period from June 1994 to November 1994 was prepared by D.K. Aggarwal. All these forged documents were attested by the petitioner himself. Investigations were also conducted at the Bangalore University to confirm that the aforementioned documents were forged.

The Government Examiner of Questioned Documents gave his opinion in respect of the documents and has confirmed the forgery.

10. The charge sheet concluded as under:

“Thus Smt. Seema in active connivance with her father had submitted the forged mark sheet and false work experience certificates as genuine, knowing fully well at the time of their use that these were forged/false documents in order to get appointed to a post for which she was actually not eligible at the relevant time.”

11. The above charge sheet was filed along with a copy of the order dated 16th May 2001 passed by the Government of the National Capital Territory of Delhi (GNCTD) conveying the sanction accorded by the Administrator/Lt. Governor of Delhi under Section 19(1)(c) of the Prevention of Corruption Act, 1988 (PC Act) for the prosecution of the petitioner for the offences under Section 120B read with Sections 420/468/471 IPC and Section 13(2) read with 13(1)(d) PC Act.

12. The record of the proceedings of the trial court showed that the case made no progress from the date of filing of the charge sheet till 24th March 2004 since the petitioner had filed a petition under Section 482 CrPC, being CrI. M.C. No. 3039 of 2001, in this Court in which a stay was granted of further proceedings. It is stated that the following

order was passed by this Court dismissing the said petition, CrI.M.C. No.3039/2001, on 11th February 2004:

“CrI.M.C. 3039/2001 is directed against quashing of charge sheet filed by CBI alleging that the petitioner had forged her mark sheet and sought employment with the Pollution Control Board.

It is contended by the Counsel for the petitioner that on the basis of material available on record, no offence is made out in as much as even the marksheet which is stated to have been forged has not been recovered by the CBI. He also submits that the offences for which challan has been filed, are not made out on the basis of material available on record.

Counsel for the CBI on the other hand, contends that the material is very much part of the charge sheet and is before the court which will be looking into the matter while framing charges.

Having heard counsel for the parties, I am of the opinion that it is not proper for this court at this stage to examine material on record and that it would be appropriate for the trial court to examine all material before it at the time of framing charge, if at all made out. In any case, the petitioner will have ample opportunity to state his case before the trial court.

CrI.M.C. 3039/2001 dismissed.”

13. On 24th March 2004, the learned Special Judge, CBI, Delhi took cognizance of the offences against the accused. They were granted bail on 19th April 2004. On 19th July 2008 a very detailed order on charge

was passed by the learned Special Judge. On the same date, another detailed order was passed disposing of an application filed by the petitioner seeking discharge. Thereafter on 11th August 2008 charges were framed against the petitioner and other accused for the aforementioned offences. The prosecution evidence commenced with the examination-in-chief of PW 1 on 11th December 2008. The case is now listed for further proceedings on 11th and 12th May 2009.

14. The principal contention raised by the petitioner in his application seeking discharge is that the mandatory provision of Sections 6 and 6A of the Delhi Police Establishment Act, 1946 (DSPE Act) were not complied with by the CBI. It was contended that the CCSU was a State University under the U.P. State Universities Act, 1973 and with effect from 1st March 2000, the petitioner was appointed as its Vice Chancellor. His status in that post was above the rank of the Joint Secretary of the Central Government. In terms of Sections 6 and 6A DSPE Act, the prior consent of the State of UP had to be obtained by the CBI since it was seeking to exercise powers and jurisdiction in respect of the petitioner who was in UP at the time of the registration of the aforementioned RC on 3rd May 2000.

15. The aforementioned contention was rejected by the learned Special Judge by the order dated 19th July 2008 after following the judgment of

this Court in *P.M. Singh v. CBI 145 (2007) DLT 375* wherein it was held that Section 6A DSPE Act which was brought into operation with effect from 11th September 2003 did not apply to pending investigations and therefore it was not obligatory for the CBI to have obtained the prior approval of the Central Government.

16. Mr. Chandrashekar the learned Senior Counsel appearing for the petitioner assails the aforementioned order dated 19th July 2008 passed by the learned Special Judge primarily on the ground that the said order does not deal with the submission of the petitioner concerning non-compliance with Section 6 DSPE Act. He submits that the requirement of previous approval of the State of UP for proceeding against the petitioner, who was a public servant functioning under the control of that Government, was a mandatory requirement. A reference is made to Sections 3, 5 and 6 of the DSPE Act to contend that the statutory requirement was connected with the person and not either with the offence or the place of occurrence.

17. It is submitted that the requirement under Section 6 DSPE Act was different from the requirement of previous sanction envisaged by Section 197 CrPC. According to Mr. Chandrashekar, the object of enacting Section 6 DSPE Act was to ensure that a public servant functioning under the control of the Government of UP should not be

needlessly harassed by the CBI as that might interfere with his functioning as public servant. In short, it is submitted that Section 6 DSPE Act is a protection offered to the public servant and non-compliance with its requirement would vitiate the entire trial. This is the only contention raised in the present proceedings before this Court.

18. In order to appreciate the aforementioned submission, a reference may be made to Sections 3, 5 and 6 of the DSPE Act which reads as under:

“3. Offences to be investigated by special police establishment.__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.

5. Extension of powers and jurisdiction of special police establishment to other areas.__(1) The Central Government may by order extend to any area (including Railway areas), in a State, not being a Union territory, the power 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 of 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 a 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. Consent of State Government to exercise of powers and jurisdiction. 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.”

19. Pursuant to the Section 6 of the DSPE Act, the Government of Uttar Pradesh published the following Notification of 15th June 1989:

“GOVERNMENT OF UTTAR PRADESH
Home (Police) Section-1

No. 3442/VIII-1-84/88
Lucknow, Dated : June 15, 1989.

In pursuance of the provisions of section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946) the Governor of the State of Uttar Pradesh is pleased to accord consent to the extension of powers and jurisdiction of the members of the Delhi Special Police Establishment in whole of the State of Uttar Pradesh, for investigation of offences, punishable under the Prevention of Corruption Act, 1988 (49 of 1988), and attempts, abetments and conspiracies in relation to all or any of the offence or offences mentioned above and any other offence or offences committed in the course of the transaction and arising out of the same facts, subject however to the condition that no such investigation shall be taken up in cases relating to the public servants, under the control of the State Government except with the prior permission of the State Government.

BY ORDER AND IN THE NAME OF THE GOVERNOR.

Sd/-
(S.K. TRIPATHI)
HOME SECRETARY TO THE
GOVT. OF UTTAR PRADESH”

20. This was followed by an order passed by the Government of India on 23rd August 1990 as under:

“O R D E R

S.O.....in supersession to department of Personnel and Training Order No. 228/40/88-AVD II dt. 6.7.89 and in exercise on the powers conferred by sub section (1) of sec. 5 read with sec. 6 of the Delhi Special Police

Establishment Act, 1946 (Act No. 25 of 1946). The Central Govt. with the consent of the State Government of Uttar Pradesh (vide consent order No. Home (Police) sec. I No. 3442/VIII-1-84/88 dated 15.6.89 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Uttar Pradesh for investigation of offences as mentioned hereunder:-

(a) Offences under Prevention of Corruption Act, 1988. (Act No. 49/88)

(b) Attempts, abetments and conspiracies in relation to or in connection with one or more of the offences mentioned above, and any other offence or offences committed in the course of the same transaction arising out of the same facts.

Provided that this notification will not be applicable to the cases relating to the public servants under the control of the State Government except with the prior permission of the State Government.”

21. A collective reading of Sections 3, 5 and 6 of the DSPE Act along with the aforementioned notifications indicates that the investigating into cases involving offences arising out of the PC Act “and any other offence or offences committed in the course of the same transaction and arising out of the same facts” against public servant under the control of the State of UP, cannot be undertaken by the CBI “except with the prior permission of the State Government”. The contention of the learned Senior Counsel for the Petitioner is that the words “powers

and jurisdiction in any area in a State” occurring in Section 6 DSPE Act includes the powers to arrest, question and investigate the public servant, physically located within the State of UP at the time the CBI seeks to exercise such power and jurisdiction. It is submitted that the petitioner functioned as Professor in the DCE from 23rd November 1987 to 28th February 2000 and took over as the Vice Chancellor of the CCSU, Meerut on 1st March 2000. It is submitted that, therefore, on the date of the registration of the RC the petitioner was a public servant for the purposes of the aforementioned notification dated 15th June 1989.

22. A careful reading of the notification dated 15th June 1989 shows that the emphasis is not merely on the fact that an investigation against a public servant under the control of the State of UP should be undertaken with the prior permission of the State of UP. That requirement is premised on the basis that the offence or offences committed under the PC Act, which are subject matter of the investigation, have in fact taken place in the State of Uttar Pradesh. Unless this interpretation is adopted, Section 6 DSPE Act may not be able to be practically worked out. In the instant case, the offences have all taken place in the National Capital Territory of Delhi (NCTD) and sanction to prosecute the petitioner has been granted by the GNCTD. In fact it is not the petitioner’s case that any requirement in terms of Section 6 DSPE Act concerning the GNCTD has not been

complied with. CBI cannot chase the petitioner into every State that the petitioner may be posted thereafter, to seek prior permission of that State for prosecuting him.

23. Section 6 DSPE Act also talks of the exercise of the powers and jurisdiction “in any area in a State”. In the context in which the said words are used in Section 6, it cannot imply that the powers and jurisdiction of the CBI can be exercised in a State, in which the offence may not have taken place, only with the prior sanction of that State. The time period during which the offence takes place also becomes important.

24. In the instant case, the time of commission of the offences is some time between 1997 and 1998, long before the petitioner took over as Vice Chancellor, CCSU. The mere fact that the petitioner happened to be Vice Chancellor of CCSU at the time of filing of the RC cannot attract the requirement of Section 6 vis-à-vis the Government of Uttar Pradesh. The offences investigated by the CBI were neither committed within the State of UP or by the petitioner in his official capacity as Vice Chancellor of CCSU.

25. In the considered view of this Court, in the facts and circumstances of the present case, there was absolutely no requirement for the CBI to have obtained the prior permission of the State of UP for prosecuting the petitioner pursuant to the registration of the aforementioned RC.

26. A reference is made to the judgment of the learned Single Judge of the Allahabad High Court in *Dharmendra Deo Misra v. CBI IV (2004) CCR 153*. The facts of the said case in *Dharmendra Deo Misra* bear no similarity with the facts of the present case. The petitioner there was sought to be prosecuted for acts done by him as a Chairman of the Ghaziabad Development Authority (GDA). By the time, the prosecution was undertaken the petitioner had been reverted as Commissioner, Meerut Division. There was no question of the offence having been committed in a State other than the State of UP for which the petitioner there was sought to be investigated. On the facts of that case, the Allahabad High Court held that the CBI had to mandatorily obtain the previous approval of the State of UP for prosecuting that petitioner. It is evident that the facts of the present case are different and therefore the said judgment in *Dharmendra Deo Misra* has no application in the instant case.

27. In the considered view of this Court, there is no merit in the contentions raised by the petitioner. The petition is accordingly

dismissed with no orders as to costs. The trial court record be sent back immediately together with a copy of this order.

28. Order dasti.

S. MURALIDHAR, J.

MARCH 25, 2009

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