

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

Writ Petition No.27445 of 2016

ORDER: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

_____ This writ petition is preferred by five of the accused in Special Sessions Case Nos.2 and 3 of 2014 questioning the transfer of these cases, from the Court of the I Additional Metropolitan Sessions Judge, Nampally to the Court of the V Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, as illegal, arbitrary and violative of Articles 14, 19 and 21 of the Constitution of India. A consequential direction is sought that the cases be transferred back to the Court of the IV Additional Metropolitan Sessions Judge, Nampally, Hyderabad within whose jurisdiction the schedule offences, arising out of the two cases investigated by the National Investigation Agency, Hyderabad, were committed.

_____ As the jurisdiction of the High Court to transfer these two cases from the Court of the IV Additional Metropolitan Sessions Judge, Nampally, Hyderabad to the Court of the V Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar is in issue, it is not necessary for us to record the facts which resulted in the present writ petition being filed. Suffice it to note that, by virtue of a notification dated 22.01.2013 published in the Gazette of India dated 24.01.2013, the Court of the I Additional Metropolitan Sessions Judge, Nampally, Hyderabad presided over by Sri G.Laxmipathi, Judge, was notified as a Special Court for the purposes of Section 11(1) of the National Investigation Agency Act, 2008 (for short "the NIA Act") having jurisdiction throughout the State of Andhra Pradesh for the trial of the schedule offences.

_____ On and from 02.06.2014, the erstwhile State of Andhra Pradesh was bifurcated into the States of Telangana and Andhra Pradesh. By proceedings dated 30.12.2014 the Registrar (Vigilance) of the High

Court informed the Joint Secretary, Ministry of Home Affairs, Government of India, New Delhi that, pursuant to a letter received from the Deputy Inspector General, National Investigation Agency, Hyderabad dated 27.11.2014, along with the proposal of the Under Secretary, Ministry of Home Affairs, dated 15.12.2014, the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh had considered the proposal for notifying the Court of the V Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar as the Special Court for trial of offences filed under the NIA Act, and had decided to specify the said Court as the Special Court with jurisdiction over the entire State of Telangana for trial of NIA Act cases under Section 11(1) of the NIA Act. The Central Government was requested to issue a notification under Section 11(1) of the NIA Act notifying the Court of the V Additional District and Sessions Judge Ranga Reddy District at L.B.Nagar as a Special Court to exercise jurisdiction over the entire State of Telangana for trial and disposal of cases filed under the NIA Act, in addition to the present Special Court i.e the I Additional Metropolitan Sessions Court, Hyderabad. Thereafter, the Central Government, in exercise of its powers under Section 11(1) of the NIA Act, issued notification dated 29.01.2015 notifying the Court of the V Additional District and Sessions Judge, Ranga Reddy District as the Special Court having jurisdiction throughout the State of Telangana, for the purpose of Section 11(1) of the NIA Act, for the trial of scheduled offences.

On a request made by the Deputy Inspector General, National Investigation Agency, by his letter dated 16.02.2015, to transfer Special Sessions Case Nos.2 and 3 of 2014 from the Court of the I Additional Metropolitan Sessions Judge, Nampally, Hyderabad to the Court of the V Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar for speedy trial and disposal, the High Court, in the exercise of its powers under Section 407 Cr.P.C, transferred the Special Sessions Cases from the Court of the I Additional Metropolitan

Sessions Judge, Nampally, Hyderabad to the Court of the V Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar for speedy trial and disposal in accordance with law. The Metropolitan Sessions Judge, Hyderabad was directed to take necessary steps to send the two cases to the Court of the V Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar for trial and disposal in accordance with law.

Thereafter the Central Government, in the exercise of powers conferred by Section 11(1) and (3) of the NIA Act and in supersession of the notification dated 22.01.2013 except as regards things done or omitted to be done before such supersession and on the recommendation of the Chief Justice of the High Court of Judicature at Hyderabad, issued notification dated 16.10.2015 notifying the Court of the IV Additional Metropolitan Sessions Judge, Hyderabad as a Special Court for the purpose of Section 11(1) and (3) of the NIA Act, for trial of schedule offences, having jurisdiction throughout the State of Andhra Pradesh. Thereafter, by notification dated 28.12.2015, the words "having jurisdiction throughout the State of Andhra Pradesh" were substituted with the words "having jurisdiction throughout the State of Telangana". It is not in dispute that, after the Central Government issued notification dated 28.12.2015, the High Court at Hyderabad has the power, under Section 13(2) of the NIA Act, to transfer any case pending before a Special Court situated within the State of Telangana to another Special Court within the same State; and, if Special Sessions Case Nos.2 and 3 of 2014 had been transferred after the said notification, exercise of jurisdiction by the High Court, under Section 13(2) of the NIA Act, could not have been faulted.

The contention of Sri R.Mahadevan, learned counsel for the petitioners, however is that, when the High Court exercised powers under Section 13(2) of the NIA Act on 26.02.2015, the I Additional Metropolitan Sessions Judge, Hyderabad had jurisdiction, in terms of

the Central Government notification dated 22.01.2013, throughout the State of Andhra Pradesh for trial of schedule offences under the NIA Act; consequently, transfer of Special Cases from the composite State of Andhra Pradesh to the present State of Telangana would be an inter-state transfer; as the power to effect transfer of cases from one State to another has been conferred, by Section 13(2) of the NIA Act, only on the Supreme Court, the High Court lacked jurisdiction to do so; and since the power exercised by the High Court, in issuing proceedings dated 26.02.2015, was under Section 407 Cr.P.C, such exercise of power is not referable to Section 13(2) of the NIA Act. Learned counsel would also place reliance on ***Kartar Singh vs. State of Punjab***^[1] in this regard.

On the other hand Sri P.Vishnuvardhan Reddy, learned Standing Counsel for the National Investigation Agency, would submit that the composite State of Andhra Pradesh, which existed when the Central Government issued notification dated 24.01.2013, ceased to remain as such from the appointed day i.e 02.06.2014; as the offences were committed within the City of Hyderabad which forms part of the State of Telangana and, as the High Court at Hyderabad exercises jurisdiction over both the State of Telangana and the residuary State of Andhra Pradesh under the Andhra Pradesh Reorganisation Act, 2014 (for short "the Act"), it had the power to transfer both the cases from the Court of the I Additional Metropolitan Sessions Judge, Hyderabad to the Court of the V Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar; and, in any event, this question is academic since the power conferred on the Court of IV Additional Metropolitan Sessions Judge, Hyderabad, in terms of the notification dated 16.10.2015, has, by the subsequent notification dated 28.12.2015, now been confined to the State of Telangana. According to the learned counsel, now that there are two Special Courts within the State of Telangana, the High Court has the jurisdiction, under Section 13(2) of the NIA Act, to transfer a Special Case from one

Special Court within the State of Telangana to another.

Before the rival submissions, urged by Learned Counsel on either side, are considered, it is necessary to note the observations of the Supreme Court in **Kartar Singh**¹, on which reliance is placed on behalf of the petitioners on the ground that Section 13(2) of the NIA Act is analogous to Section 11(2) of the TADA Act. To quote:-

“.....Harking back to Section 11(2) and (3) of TADA Act, the concurrence of the Chief Justice is sought for when the exigencies of the situation prevailing in the State is not conducive to a fair, impartial or speedy trial. The reasons for seeking such concurrence, of course, will be manifested in the motion moved by the law offices. The Chief Justice of India, while discharging his statutory functions passes a statutory order and gives or refuses the concurrence on drawing his requisite subjective satisfaction on the materials placed before him in the motion.

It may be added, in this context that the Central Government cannot transfer any case under Section 11(2) or issue a notification under Section 11(3) in case the Chief Justice refuses to give the concurrence. To say differently, to pass an order either under Section 11(2) or 11(3) the concurrence of the Chief Justice is a sine qua non. But at the same time one should be alive to the legal position that the mere according of concurrence by itself is not an order of transfer but it only facilitates the Central Government to pass an order under either of the above provisions. IN other words, the obtaining of concurrence of the Chief Justice of India is one of the specified conditions to be fulfilled or complied with before any order either under sub-section (2) or sub-section (3) of Section 11 is passed by the Central Government. The according of the concurrence though imperative does not compel the Government to pass any order if, for any other intervening causes, the Central Government even after obtaining the concurrence decides that there is no necessity of transferring any case. In that situation the concurrence will have no effect. Therefore, the according of concurrence which is a condition precedent for passing the transfer order by the Government is only a statutory order and not a judicial order because there is no adjudication of any 'lis' and determination of any issue. Hence the final order passed by the Government may be open to judicial review but not the concurrence accorded which is only a statutory condition to be satisfied before passing the transfer order by the Central Government.....”

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From the afore-extracted portion, of the judgement of the Supreme Court in **Kartar Singh**¹, it is evident that the Central Government is not empowered to issue a notification without the concurrence of the Chief Justice; while obtaining concurrence of the Chief Justice is no doubt a pre-condition, it does not compel the Central Government, even after obtaining the concurrence, to issue a notification if, for any other intervening cause, it decides not to do so.

It is not in dispute that the concurrence of the Chief Justice of the

High Court has been obtained before issuing all the aforesaid notifications under Section 11(1) and (3) of the NIA Act. The dispute, in the present case, is whether transfer of the special cases from the Court of the I Additional Metropolitan Sessions Judge, Hyderabad to the V Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, pursuant to the proceedings of the High Court dated 26.02.2015, is valid or not.

Section 3 of the Act stipulates that, on and from the appointed day, there shall be formed a new State to be known as the State of Telangana comprising the territories, of the existing State of Andhra Pradesh, specified therein. Among the districts, referred to in Section 3, is the district of Hyderabad within the territorial limits of which the offences were committed resulting in Special Sessions Case Nos.2 and 3 of 2014 being instituted. Section 3 of the Act further provides that, thereupon, the said territories shall cease to form part of the existing State of Andhra Pradesh. Section 4 stipulates that, on and from the appointed day, the State of Andhra Pradesh shall comprise the territories of the existing State of Andhra Pradesh other than those specified in Section 3. The expression “appointed day” is defined, under Section 2(a) of the Act, as a day which the Central Government may, by notification in the Official Gazette, appoint.

The Central Government, by notification dated 04.03.2014, stipulated 02.06.2014 as the appointed day. Consequently, on and from 02.06.2014, the State of Telangana came into being with the territories of the existing State of Andhra Pradesh as mentioned in Section 3 of the Act and, in terms of Section 4 of the Act, it is only the territories, other than those specified in Section 3 of the Act, which comprise the territories of the present State of Andhra Pradesh.

While Section 5(1) of the Act stipulates that Hyderabad is the common capital for both the States of Telangana and Andhra Pradesh, the question which necessitates examination is whether the High Court, when it issued the proceedings dated 26.02.2015, was

transferring a case from a Special Court in one State to a Special Court in another State, and not within the same State?

Section 30(a) of the Act stipulates that, on and from the appointed day, the High Court of Judicature at Hyderabad shall be the common High Court for the State of Telangana and the State of Andhra Pradesh till a separate High Court for the State of Andhra Pradesh is constituted under Article 214 of the Constitution of India read with Section 31 of the Act. Both on 26.02.2015 when it issued the proceedings transferring the special cases, and even as on date, the High Court of Judicature at Hyderabad continues to exercise jurisdiction over all the territories both within the States of Telangana and Andhra Pradesh.

Section 13(2) of the NIA Act stipulates that, having regard to the exigencies of the situation prevailing in a State, the Supreme Court may transfer any case pending before a Special Court to any other Special Court within that State or in any other State; and the High Court may transfer any case pending before a Special Court situated in that State to any other Special Court within the State. While the power conferred on the Supreme Court, under Section 13(2) of the NIA Act, is to transfer a case pending before a Special Court to another Special Court either within the same State or in any another State, the power conferred on the High Court is to transfer a case pending before a Special Court to another within the same State, and not to another State. It is only if the State of Andhra Pradesh, referred to in the Government of India notification dated 24.01.2013 (on which date the State of Telangana had not come into existence), is treated as a State distinct from the State of Telangana, which came into being on and from 02.06.2014, can it be said that High Court lacked jurisdiction to transfer these Special Cases.

As noted hereinabove the State of Andhra Pradesh, as it stood when the Government of India notification dated 24.01.2013 was issued, comprised the territories of both the present States of

Telangana and Andhra Pradesh, and it is only on and from the appointed day i.e 02.06.2014 was the composite State of Andhra Pradesh bifurcated into two States. As the District of Hyderabad falls within the present State of Telangana, it is difficult to accept the submission of Sri R. Mahadevan, Learned Counsel for the petitioner, that the Court of the I Additional Metropolitan Sessions Judge, Hyderabad, which was constituted to exercise jurisdiction throughout the composite State of Andhra Pradesh, ceased to exercise jurisdiction over the State of Telangana from 02.06.2014 onwards. As the said Court continued to exercise jurisdiction over both the States of Telangana and Andhra Pradesh even after 02.06.2014, transfer of the Special Cases, which related to Hyderabad District, from the Court of the I Additional Metropolitan Sessions Judge, Hyderabad to the Court of the V Additional District and Sessions Judge, Ranga Reddy District is, in effect, transfer of cases within the State, and the High Court had the power, under Section 13(2) of the NIA Act, to effect such transfer.

In any event this issue has now become academic, as the Court of the I Additional Metropolitan Sessions Judge, Hyderabad is no longer a Special Court under the NIA Act; and the Court of the IV Additional Metropolitan Sessions Judge, Hyderabad, which was constituted as a Special Court in supersession of the earlier notification whereby the I Additional Metropolitan Sessions Court, Hyderabad was notified as a Special Court, has now been conferred jurisdiction to try schedule offences under the NIA Act within the State of Telangana. Consequently, both the Court of the IV Additional Metropolitan Sessions Judge, Hyderabad, and the Court of the V Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, are Special Courts having jurisdiction to try cases under the NIA Act throughout the State of Telangana. Since both the Special Courts now fall within the same State of Telangana, the High Court, undoubtedly, has the power to transfer the special cases from the Court of the IV Additional Metropolitan Sessions Judge, Hyderabad to

the Court of the V Additional District and Sessions Judge, Ranga Reddy. In fact the prayer in the writ petition is also to transfer the case back to the Court of the IV Additional Metropolitan Sessions Judge, Nampally, which itself was notified as a Special Court in terms of the Government of India notification dated 16.10.2015 and which, pursuant to the notification dated 28.12.2015, now has jurisdiction only throughout the State of Telangana, and not over the present State of Andhra Pradesh.

It is no doubt true that, in its proceedings dated 26.02.2015, the High Court has traced its power to Section 407 Cr.P.C. The mere fact that Section 13(2) of the NIA Act has not been referred to therein is of no consequence, as it is settled law that, as long as power is conferred by the Statute, failure to refer to the source of such power in an order does not negate exercise of the power itself. (**Pine Chemicals Ltd. vs. Assessing Authority** ^[2]).

Viewed from any angle, we see no reason to fault the action of the High Court in transferring the Special Sessions Case Nos.2 and 3 of 2014 from the Court of the I Additional Metropolitan Sessions Judge, Nampally to the Court of the V Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar.

The writ petition fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

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(RAMESH RANGANATHAN, ACJ)

(U.DURGA PRASAD RAO, J)

29th August 2016
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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

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[\[1\]](#) 1994 Supreme Court Cases (Cri) 899

[2] (1992) 2 SCC 683