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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 25th September 2018

Decided on: 8th October 2018

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W.P.(CRL) 791/2018 & Crl. M.A. No. 4962/2018

ANAND AGARWAL

..... Petitioner

Through: Mr. Amarendra Sharan, Senior Advocate with Mr. Abhimanyu Bhandari, Mr. Somesh Tiwari, Mr. Nikhil Rohatgi, Mr. Chirag Madan, Mr. Arav Pandit, and Mr. Shashank Khurana, Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Amit Mahajan, CGSC for Respondent No.1/UOI.
Mr. Anupam S. Sharma, SPP for CBI/R2 with Mr. Anurag Andley, Mr. Prakarsh Airan, Mr. Shivam Gupta, Ms. Kamakshi Verma, Mr. Ankit Vashisht, and Mr. Parikshith, Advocates.
Mr. Sandeep Jha, Advocate for State of Chattisgarh / R3.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL**

JUDGMENT

Dr. S. Muralidhar, J.:

The issue

1. An interesting question of law arises in this writ petition under Article 226 of the Constitution regarding prior sanction having to be taken by the

Central Bureau of Investigation ('CBI') from the State government in terms of Section 6 of the Delhi Special Police Establishment Act, 1946 ('DSPE Act') prior to investigating an offence in the concerned State.

2. The issue arises in the context of the steps taken by the CBI to investigate a case registered as RC No.217/2107/A0004/CBI/ACU-V in New Delhi on 18th February 2017 under Section 120-B of the Indian Penal Code 1860 (IPC) read with Section 8 of the Prevention of Corruption Act, 1988 ('PC Act') against Mr. B. L. Agarwal, Mr. Bhagwan Singh, Mr. O.P. Sharma @ O.P. Singh @ Syed Burhanuddin, and some other unknown persons.

Background facts

3. The background facts are that earlier two cases were registered by the CBI against Mr. B. L. Agarwal, the then Health Secretary and present Principal Secretary, Higher Education, Government of Chhattisgarh (Respondent No.3). The Petitioner is the brother-in-law of Mr. B. L. Agarwal. The two cases registered against Mr. B. L. Agarwal by the CBI were:

- a) RC No. 9(A)/2010/CBI/ACB/Bhilai registered at CBI/ACB/Bhilai on 31st December, 2010 in which charge sheet for commission of offences under Section 120-B read with Sections 419, 466 and 477-A of IPC was filed on 17th November, 2011.
- b) RC No. 1(E)/2010/EOU-VII/Delhi registered on 4th January, 2010 for commission of offences under Section 120-B IPC read with Sections 420, 468, 471, 477A IPC and Section 13(1)(d) read with Section 13(2) PC Act.

4. Not much progress had been made by the CBI to prosecute the above

cases. According to the CBI, Mr. Agarwal, an IAS officer of the 1988 batch, had already obtained clearance from Respondent No.3 for his inclusion in the list of IAS officers of the 1988 batch empanelled for Central deputation. However, the pendency of the aforementioned two cases were a stumbling block. Therefore, Mr. B.L. Agarwal wanted CBI to close the cases and refer them to the Economic Offences Wing ('EOW') of Respondent No.3.

5. According to the CBI, with a view to getting the above relief, the Petitioner entered into a criminal conspiracy with the co-accused Mr. Bhagwan Singh, a resident of Noida, Uttar Pradesh. In turn, Mr. Singh conveyed the aforementioned issue to the other co-accused Mr. O. P. Sharma who claimed to be working in the Prime Minister's Office ('PMO'). Mr. Sharma claimed that he could influence the top officers of all the departments in the Government of India. Mr. Sharma further claimed that he could get the desired relief for Mr. Agarwal from the CBI and assured that the matter would be settled in his favour on payment of an illegal gratification of Rs.1.5 crores to the concerned public servants and the two co-accused, viz. Mr. Singh and Mr. Sharma.

6. In furtherance of the aforementioned conspiracy, Mr. B. L. Agarwal is stated to have met Mr. Singh on 11th February 2017 at Hotel Claridges, New Delhi. He is also stated to have met Mr. Sharma with Mr. Singh at Hotel Saravana Bhavan, New Delhi on the same date to discuss "modalities of payment of illegal gratification". Mr. B. L. Agarwal is stated to have agreed to pay the aforementioned amount as illegal gratification and further thereto, he sent Rs.40 lakhs to Delhi for Mr. Singh through *hawala* agents in three

instalments. Two instalments of Rs.15 lakhs each were sent on 12th February 2017 and 14th February 2017 respectively. The third instalment of Rs.10 lakhs was sent on 16th February 2017. According to the CBI, out of the aforementioned sum of Rs.40 lakhs sent by Mr. B. L. Agarwal, Mr. Singh received Rs.20 lakhs on 16th February 2017 in Delhi.

7. The case of the CBI is that Mr. B. L. Agarwal expressed difficulty in arranging cash for the balance amount of the total agreed upon sum of Rs.1.5 crores. He accordingly offered to pay the remaining sum in the form of gold. The two co-accused, in consultation with each other, agreed to receive the gold through a *hawala* agent. The CBI claims to have intercepted the Petitioner when he delivered two kilograms of gold to one Mr. Sumit Pandey @ Monu on behalf of Mr. B. L. Agarwal on 18th February 2017.

The charge sheet

8. This Court has perused the charge-sheet filed in the present case wherein the precise allegations with regard to the present Petitioner read as follows:

“(v) It is further alleged that Sh. B.L. Agrawal expressed difficulty in arranging cash for paying the balance illegal gratification, and therefore, Sh. Syed Burhanuddin @ O.P. Sharma @ O.P. Singh and Sh. Bhagwan Singh agreed to accept a part of illegal gratification in the form of 2Kgs gold from Sh. B.L. Agrawal. Sh. Syed Burhanuddin @ O.P. Sharma @ O.P. Singh, through Sh. Bhagwan Singh, asked Sh. B.L. Agrawal to deliver the gold to his contact person at Raipur. It is further alleged in the FIR that Sh. B.L. Agrawal asked his brother-in-law Sh. Anand Agrawal to arrange for the delivery of 2Kg Gold and take further action in this regard. It is alleged in the FIR that Sh. B L Agrawal was likely to deliver the illegal gratification in the form of 2 Kgs of gold through

Sh. Anand Agrawal to contact man of Sh. Syed Burhanuddin @ Sh. O.P. Sharma @ O.P. Singh on 18.02.2017 at Raipur.

Result of investigation:

- 16.2. On 18.2.2017, the CBI team led by Sh. S C Jiani, Dy.SP along with three independent witnesses, intercepted Sh. Anand Kumar Agrawal, brother-in-law of Sh. B.L. Agrawal along with Sh. Sumit Pandey @ Monu Bhai, when they were coming downstairs from the shop of Sh. Monu Bhai at 1st floor of Shanti Vijay Market, Opposite Madhuvan Hotel, Sadar Bazar, Raipur at around 1405 Hrs. after Sh. Anand Agrawal had delivered two gold bricks to Sh. Monu Bhai. In this interception, a GC Note of Rs. 100 denomination bearing no. "OKD 855931", was recovered from Sh. Anand Agrawal which he had received from Sh. Monu Bhai after handing over the said two bricks of gold each of 1 kg weight to him, as a token of authenticity of the transaction. As soon as Sh. Anand Agrawal and Sh. Monu Bhai were intercepted, Sh. Monu Bhai informed that he had sent the said two bricks of gold to Sh. Sunil Soni through his employee/associate Sh. Subhash Prajapati.
- 16.3 When the CBI team reached M/s Bansi Lai Soni and Sons, Proprietary concern of Shri Sunil Soni located at Ground Floor, House No. 295, Opposite Soni Sadan, Swami Vivekanand Ward No.57, Budha Para, Raipur, Chhattisgarh, after concluding the proceeding at the shop of Sh. Monu Bhai, Sh. Sunil Soni had already cut one of the two gold bricks into two pieces in order to check its purity. He did not cut the other gold brick because it was bearing the Stamp of MMTC PAMP 1 KILO GOLD 995 0 MELTER ASSAYER and such gold bricks bearing the stamp impressions of MMTC are treated as pure gold. Shri Anand Agarwal, Sh. Monu Bhai, Sh. Subhash Prajapati and Sh. Sunil Soni confirmed in presence of the

independent witnesses that these were the same gold bricks which Sh. Anand Agrawal had handed over to Sh. Monu Bhai at around 14.05 hrs. on 18.2.2017. Therefore, these gold bricks were seized by CBI in presence of independent witnesses under their signatures.

- 16.4 Sh. Dinesh Kumar Goyal @ Titu @ Rambhai received a call on 17.02.2017 from Sh. Syed from his mobile No.897885111 whereby he (Syed) asked him to get his 2kg of gold sold at Raipur, therefore, he contacted Sh. Mohit Agrawal for the purpose who gave him the number of one Sh. Monu Bhai in Raipur and number of a Rs.100 GC note which he passed on to Sh. Syed over phone through whatsapp or sms. The contact number of Sh. Monu Bhai and number of a 100 rupee GC note, which was recovered from Sh. Anand Agrawal, has been found in the SMS data contained in mobile handset of Sh. Syed, seized from Sh. V S Raju, an employee of Sh. Syed Burhanuddin. This SMS has been forwarded by Sh. Syed Burhanuddin to Sh. Bhagwan Singh.
- 16.5 Sh. Mohit Aggarwal @ Ayush Kumar Aggarwal, on receiving call from Sh. Dinesh Kumar Goyal @ Titu @ Rambhai had called up Sh. Monu at Raipur, who was known to him, at his land line no. 0771-2539007 on 17.02.2017 and took the number of Rs.100/- GC note and passed on the same along with the landline number of Sh. Monu to Sh. Titu.
- 16.6 Sh. Amit Kumar Jain who knew Sh. Anand Agrawal since childhood, on his request had introduced Sh. Anand Agarwal to Sh. Rahul Kochar of M/s Kochar Jewellers. On 03.02.2017, Sh. Anand Agarwal gave an amount of Rs.29,40,000/- in the denomination of Rs.2000/- in cash to Sri Rahul Kochar and received One Kg of gold from him in his presence.”

9. It is the case of the Petitioner that after his arrest, he was produced before

the concerned criminal Court in Delhi and remanded to judicial custody. He was ultimately granted bail by the said criminal court. A charge-sheet was filed in the Court of the Special Judge, CBI Cases, Patiala House Court, New Delhi on 20th April 2017. The arguments on the issue of charge are still underway in those proceedings.

The present petition

10. The first prayer in this writ petition is that this Court should declare invalid a notification No. 228/61/2000-ADV dated 25th April 2001 issued by the central government in exercise of the powers under Section 5 (1) of the DSPE Act extending, with the consent of the Government of Chhattisgarh, the powers and jurisdiction of the members of the DSPE to the whole of Chhattisgarh for investigation of offences specified in the Schedule to the said Notification and attempt, abetment and conspiracy in relation thereto or in connection with the offences mentioned in the list and any other offences committed in the course of the same transaction or arising out of the same facts. The case of the Petitioner is that through the replies received from Respondent No.3 to applications made to it under the Right to Information Act 2005 (RTI Act) it stood established that no such consent of Respondent No.3 has ever been granted and that Respondent No.3 grants consent only on a case to case basis ever since the formation of Respondent No.3 in 2000.

11. The further prayers in this petition are that this Court should declare all actions, inquiries and investigation undertaken by the CBI against the Petitioner to be without jurisdiction and void *ab initio*. The third prayer is that the order dated 27th April 2017 of the learned Special Judge CBI Cases,

New Delhi taking cognisance of the offence in the absence of a valid sanction under Section 6 DSPE Act and the charge sheet dated 20th April 2017 filed by the CBI insofar as they concern the present Petitioner should be quashed.

12. Notice was issued in this petition on 16th March 2018. This Court, by an interim order dated 10th May 2018, directed that the arguments on charge could proceed but no order on charge would be passed.

Stand of Respondent No.3

13. Pursuant to the notice issued to it, both Respondent Nos.2 and 3 (CBI and the Government of Chhattisgarh) have filed their respective replies. Respondent No.3 has supported the Petitioner contending that at no point in time was any consent given by Respondent No.3 under the DSPE Act. Respondent No.3 points out in response to the assertion in the notification dated 25th April 2001 of the central government that Respondent No.3 had conveyed its consent on 3rd February 2001, that the said letter did not merit as a notification since the “State never gave any consent.”

Stand of the CBI

14. The stand of the CBI is that the criminal conspiracy was entered into between Mr. Agarwal and the co-accused in Delhi and it is only pursuant thereto that the other co-accused, including the present Petitioner, acted. It is submitted that as long as the offence is committed in Delhi, and the case was validly registered by the CBI in Delhi, it did not matter if the investigation pursuant to the said offence is carried on in other States without the prior sanction of those States under Section 6 DSPE Act. Mr. Anupam Sharma,

learned counsel for the CBI places reliance on the decisions in *Hussein Ghadially v. State of Gujarat* (2014) 8 SCC 425; *State of West Bengal v. The Committee for Protection of Democratic Rights* (2010) 3 SCC 571; *Vineet Narain v. Union of India* (1998) 1 SCC 226; *Kazi Lhendup Dorji v. Central Bureau Of Investigation* (1994) Suppl. (2) SCC 116; *Surinder Singh Ahluwalia (I) v. Delhi Special Police Establishment* 1991 Cri LJ 2583; *S. S. Ahluwalia (II) v. Central Bureau of Investigation* 2011 (1) JCC 602; *The Management of Advance Insurance Co. Ltd. v. Gurudasmal* (1970) 1 SCC 633; and *N. Nagambikadevi v. Central Bureau of Investigation* 2002 Cri LJ 1334. Reliance is also placed on the decision of the learned Single Judge of the Patna High Court dated 17th September 2018 in *Kanwal Tanuj v. State of Bihar* (Cr. WJC 879/2018) and the decision of the learned Single Judge of this Court dated 25th March 2009 in *Ramesh Chandra v. Central Bureau of Investigation* (Crl. M.C. 3172/2008).

Submissions of the Petitioner

15. Mr. Amarendra Sharan, learned Senior Counsel appearing for the Petitioner, argues, on the other hand, that on a collective reading of Sections 5 and 6 DSPE Act, it is untenable that any investigation can be carried on in any State outside Delhi without the consent of the concerned State Government being obtained under Section 6 DSPE Act. He submits that without such consent, the entire action of interrogation and arrest of the Petitioner would be illegal and ought to be declared as such. Reliance is placed on the decisions in *Virbhadra Singh v. Central Bureau of Investigation* 2017 SCC Online Del 7747; *Vijaysinh Chandubha Jadeja v. State of Gujarat* (2011) 1 SCC 609; and *Mayawati v. Union of India* (2012)

8 SCC 106.

16. Mr. Sharan submits that there were two illegalities committed by the CBI in the present case. The first was that the CBI, without the previous sanction of Respondent No.3 as is mandatorily required by Section 6 of the DSPE Act,, could not have arrested the Petitioner in Raipur, Chhattisgarh or have made any of the subsequent seizures even though it was pursuant to a case registered in Delhi or in connection with a crime that may have been committed by the main accused in Delhi. The second is that the Petitioner was arrested and, without any transit remand being obtained from the local Magistrate, straightway produced before the concerned CBI Court in Delhi. This, it is argued, was in violation of Article 22 of the Constitution read with Section 6 DSPE Act.

Illegality of arrest

17. As far as the second alleged violation is concerned, the Court finds that no mention is made of the same in the writ petition and therefore, there was no occasion for the CBI to address it in their reply. Nevertheless, Mr. Anupam Sharma, learned counsel appearing for the CBI, submits that, in terms of Article 22 of the Constitution itself, after excluding the time taken for the journey, a person arrested in Raipur by the CBI pursuant to a case registered in Delhi has to be produced before a Magistrate within 24 hours. It is only if the journey is likely to take more than 24 hours, that the person arrested has to be produced before a local Magistrate and a transit remand obtained.

18. The Court finds that in Article 22 (2), in computing the period of 24

hours the travel time for the arrested person to be produced before the jurisdictional Court is to be excluded. If the arrested person cannot be produced within 24 hours then he has to be produced before the nearest Magistrate.

19. In the present case, admittedly the Petitioner was produced before the Special Judge CBI in New Delhi within 24 hours of his arrest in Raipur. Since the CBI did not anticipate that more than 24 hours after his arrest would be needed to produce the Petitioner before the jurisdictional Court in Delhi, there was no occasion for the CBI to have produced the Petitioner before the local Magistrate for a transit remand. Further, the case was in fact registered in Delhi with the case of the CBI being that the criminal conspiracy was entered into in New Delhi and all further actions taken by the principal accused as well as the other accused were only pursuant to that conspiracy. The charge-sheet has been filed in the Court of the Special Judge CBI in New Delhi. That Court is therefore the jurisdictional Court.

Prior sanction under Section 6 DSPE Act

20. As far as the first submission regarding prior sanction of Respondent No.3 is concerned, the Court would first like to refer to Sections 5 and 6 DSPE Act, which read as under:

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 Railways areas), 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 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.”

21. At first blush, it would appear that any investigation carried out in a State other than the State where the case is registered would require the CBI to take the prior permission of the State in which the investigation is sought to be carried out. Thus, in the hypothetical situation of a case registered by the CBI in Kolkata, West Bengal requiring investigations to be carried out

in four other States, if one went by the contention of the Petitioner then prior permission would have to be sought from the Governments of each of those four States before the CBI proceeds to take any step in any of those respective States by way of investigation.

22.1 Although many decisions have been cited by counsel on both sides, this Court proposes to discuss only those that are directly relevant to the facts of the present case. The decision in ***Virbhadra Singh*** (*supra*) was relied upon by Mr. Sharan in support of his proposition that, in the instant case, the steps taken by the CBI in Raipur without the consent of Respondent No.3 were invalid and therefore, that part of the charge-sheet concerning the Petitioner and the criminal case itself be declared invalid.

22.2 The facts in ***Virbhadra Singh*** (*supra*) were that the Petitioner, in a writ petition under Article 226 of the Constitution, sought the quashing of a case registered by the CBI under the PC Act and Section 109 IPC. In fact, the writ petition was first filed in the Himachal Pradesh High Court but was transferred to this Court after the CBI approached the Supreme Court with a transfer petition. One of the grounds urged by the Petitioner there was that the CBI had no authority or jurisdiction to carry out the investigation in the said case in the State of Himachal Pradesh since that State had not granted its consent to such an investigation. It was further contended that “FIR/RC registered by the CBI and the order for issuance of search warrants issued by the Court in Delhi in respect of searches to be conducted at places outside Delhi, and at Shimla, are null and void, and without jurisdiction”.

22.3 In deciding this issue, the learned Single Judge observed, after discussing the decisions in *Gurudasmal (supra)*, *Surinder Singh Ahluwalia (I) (supra)*, *The Committee for Protection of Democratic Rights (supra)*, *Mayawati (supra)*, that “for the purpose of empowering and authorizing the DSPE/CBI to carry out investigation in an area falling beyond the area of the Union Territories and Railway Areas, i.e. in any area falling within one of the constituent States of the Indian Union, the consent of the Government of the State within whose area the DSPE/CBI needs to carry out investigation is imperative”.

22.4 In summarizing the conclusions in respect of issue no.4, the answer given by the learned Single Judge reads as under:

4.	Whether it was mandatory for the Central Bureau of Investigation to seek the consent of the State Government as per section 6 of the Delhi Special Police Establishment Act at the time of registration of FIR and its subsequent investigation and raiding the residential premises of the petitioners and non conforming to mandatory provisions of section 6 of the Delhi Special Police Establishment Act vitiates the investigation as well as raid in the official premises of the petitioners?	It was not mandatory for the CBI to seek the consent of the State Government of Himachal Pradesh under Section 6 of the DSPE Act at the time of registration of the FIR/ RC. Thus, the FIR/RC cannot be quashed on the ground of there being no consent under Section 6 of the DSPE Act from the State Government of Himachal Pradesh. It was mandatory for the CBI to obtain the consent of the State of Himachal Pradesh under Section 6 prior to conduct of any part of investigation in the area of State of Himachal Pradesh. The issue whether such
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		consent had been obtained generally, or specifically, as well as the issue as to what is the effect of the investigation conducted, if any, without obtaining the prior consent of the State Government of Himachal Pradesh, cannot be determined in the present proceedings and would fall for consideration, if and when a charge-sheet is filed before the learned Special Judge. The issue whether, investigation carried out de hors the consent of the State of Himachal Pradesh – even if it were to be accepted for the sake of arguments that such consent was not available, would have to be considered by the learned Special Judge in the light of the discussion and decisions taken note of hereinabove.
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22.5 Thus, it can be seen that according to the learned Single Judge, unless the charge-sheet was filed, it would not be possible to determine “what are the materials/evidences collected by the investigating agency that are sought to be relied upon by the prosecution. In case the prosecution relies on any investigation conducted within the area of the State of Himachal Pradesh, only then the petitioner may advance an argument premised on Section 6 of the DSPE Act”. Further, it was held that if such an argument were to be raised after the charge-sheet is filed, it would be for the trial Court to

appreciate, in light of the general consent order issued by the Government of India on 24th August 1990 under Section 5 DSPE Act and other provisions of the Cr PC, whether such material could still be relied upon without separate consent from the State Government.

23. In the present case, the charge-sheet has already been filed and there is no doubt that the CBI is indeed relying on what transpired during the investigation conducted in Raipur as far as the present Petitioner is concerned. However, the Court is not able to view the judgment in ***Virbhadra Singh*** (*supra*) as having considered the possibility of investigations requiring actions to be taken by the CBI in several States although the registration of the case was in one State. While consent of the State Government might be necessary for registration of a case in that particular State, to say that the CBI must seek the prior consent of every State where the investigation is thereafter conducted would make the scheme of Sections 5 and 6 DSPE Act unworkable.

24. A State Government need not consent only because some other State Government has accorded its consent. Therefore, on the logic of the judgment in ***Virbhadra Singh*** (*supra*), if the consent of eight different States had to be taken and the consent is obtained only of five States, that would mean that the investigation conducted in the remaining three States cannot be considered by the CBI and has to be jettisoned from the charge-sheet. The trial Court, on this reasoning would not be able to look into that part of the evidence.

25. On a collective reading of Sections 5 and 6 DSPE Act, this Court is unable to subscribe to such a view. On the other hand, the view expressed by a learned Single Judge of this Court in ***Ramesh Chandra*** (*supra*) appears to be more persuasive. There the person under investigation had taken employment in another State and the question was whether the consent of that other State had to be taken. This Court observed in paragraphs 21 to 25 as under:

“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 sometime 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 similar view has been expressed by another learned Single Judge of the Patna High Court in *Kanwal Tanuj* (*supra*). The purpose of the

provisions of the DSPE Act is to facilitate the CBI in carrying out its investigations. It would, therefore, be counter-intuitive if the task of the CBI is frustrated beyond the point of practicality. If in every such case the investigation is stalled because of the absence of sanction of a particular State other than the State where the case is registered, then the scheme of Sections 5 and 6 of the DSPE Act and their purpose would be defeated.

27. In the present case, the actions of the Petitioner spoken of in the charge sheet, though performed at Raipur, were pursuant to the criminal conspiracy entered into between some of the accused in New Delhi. According to the CBI, those actions of the Petitioner were in continuation of and, in a sense, a completion of the criminal acts that were planned to be undertaken in that conspiracy. They are inseparable from the main criminal conspiracy itself. According to the CBI, it is not, therefore, as if separate and distinct offences unconnected with the main criminal conspiracy in New Delhi were undertaken by the Petitioner in Raipur. Also, a reading of the charge sheet shows that the case of the CBI is that the Petitioner was aware that he was acting pursuant to and in furtherance of such criminal conspiracy.

28. The CBI's case is that offence of criminal conspiracy for which the case has been registered was committed not in Chhattisgarh but in New Delhi. That explains why the CBI has registered the case in New Delhi. The Court finds merit in the contention of the CBI that merely because the further acts pursuant to that criminal conspiracy were performed by the co-accused in a place outside Delhi, in this case Raipur, there would be no necessity for the CBI to seek the prior sanction of Respondent No.3 under Section 6 DSPE

Act to take further steps to investigate that case in Raipur or other places in Chhattisgarh.

29. For the above reasons, this Court is unable to accede to the second and third prayers of the Petitioner.

Conclusion

30. The Court is conscious that an order on charge is yet to be passed in the present case by the Special Judge (CBI). Whether the charge-sheet makes out a case against the Petitioner for the framing of charges as prayed for by the CBI is a question that has to be considered by the learned Special Judge on merits and in accordance with law. In making that decision, the Special Judge (CBI) shall not be influenced by any observations made by this Court in this order.

31. The Court accordingly finds no merit in this writ petition. The interim order is vacated. The writ petition and the application are dismissed with no orders as to costs.

S. MURALIDHAR, J.

VINOD GOEL, J.

OCTOBER 08, 2018

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