

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

**C.R.R. 1270 of 2021
(Via Video Conference)**

***Ratnesh Verma*
-vs.-
Central Bureau of Investigation & Anr.**

For the Petitioner : Mr. Milon Mukherjee, Sr. Adv.,
Mr. Sabir Ahmed, Adv.,
Mr. Avik Ghatak, Adv.,
Mr. Soham De Dhara, Adv.

For the CBI : Mr. Y. J. Dastoor, Ld. A.S.G.,
Mr. Phiroze Edulji, Adv.,
Mr. Samrat Goswami, Adv.

For the State : Mr. Kishore Datta, Ld. Adv. General,
Mr. S. G. Mukherji, Ld. P.P.,
Mr. Ranabir Roy Chowdhury, Adv.

Heard on : 01.06.2021, 08.06.2021, 09.06.2021,
10.06.2021, 14.06.2021, 19.06.2021,
21.06.2021, 22.06.2021, 23.06.2021,
30.06.2021, 02.07.2021, 06.07.2021,
09.07.2021 & 14.07.2021

Judgment on : 28.07.2021

Tirthankar Ghosh, J:-

This revisional application has been preferred challenging the proceedings relating to case No. R.C.0102020A0022 dated 27.11.2020 under Sections 120B/409 of the Indian Penal Code read with Sections 13(2)/13(1)(a) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'P.C. Act') pending before the Learned Judge, Special (C.B.I.) Court, Asansol, Paschim Bardhaman.

The complaint in relation to the First Information Report is set out as follows:-

“Information received from reliable sources has revealed that illegal excavation and theft of coal is being done by criminal elements from the leasehold area of ECL in active connivance of the officials of ECL, CISF, Indian Railways and concerned other departments. During the Joint Inspection conducted by Vigilance Department and Task Force of ECL on several leasehold areas of ECL from May, 2020 and onwards, evidence of extensive illegal mining in the leasehold area of ECL and its transportation was found. The team found several machineries which were used for excavating coal from illegal mining. During these inspections, a large number of vehicles and equipments used in illegal coal mining / its transportation and illegally excavated coal have been seized. Several instances of installation of illegal weigh bridges in concrete form were also detected which confirms of illegal coal mining and transportation from ECL areas in organized manner at a very large scale. It is further revealed by the source that illegal mining is going on at the leasehold area of ECL behind

Topsi village under Kunustoria Area and at Lachhipur Village under Kajora Area by the coal mafias in active connivance with officials of ECL and those of CISF.

It is learnt that during departmental raids on 07.08.2020 at 1 No. Railway Siding of Pandaveswar area, 9.050 MT of stolen coal was recovered and seized. Seizure of stolen coal was made from several other Railway locations as well. It is learnt that this illegal activity is being run at Railway sidings by the criminals with active connivance of unknown Railway officials.

It is further learnt that as per the Standard Operating Procedure for Action Plan – Illegal Mining and coal theft dated 08.08.2020 of CIL, “the main role of all the raids and actions to be taken is of the Area Security Officer/Area Security In-Charge, Area Authorities under the respective Chief of Security, ECL and under Area General Managers.”

Information has also been received that Shri Amit Kumar Dhar (A-1), was the General Manager, Eastern Coalfield Limited (ECL) Kunustoria Area (presently General Manager, Pandaveswar Area), and Shri Dhananjay Rai (A-4), ASI is the Area Security Inspector, Kunustoria, ECL. It is also learnt from the source that Shri Jayesh Chandra Rai (A-2), is the General Manager, Kajora Area and Shri Debashish Mukherjee (A-5), SSI, is the Security In-Charge, Kajora Area, ECL. Shri Tanmay Das (A-3) is the Chief of Security, ECL who is in overall charge to check and prevent illegal mining in ECL area. A large number of instances of illegal coal mining have been reported from their area with their active connivance.

Information has also revealed that Shri Anup Maji @ Lala (A-6) is one of the main organizers for most of the illegal mining at ECL area and transportation of illegal excavated / stolen coal. He is running the above activities in connivance with the aforesaid public servants and those public servants are allowing him to misappropriate the government property i.e. coal from the leasehold area of ECL.

From the above facts and circumstances, it appears that illegal coal mining in the ECL lease hold area is going on along with theft of coal from Railway sidings in an organized manner and above said officials of ECL, Security Officers of ECL & CISF in connivance with unknown officials of Railway and other public servants allowed Shri Anup Maji @ Lala (A-6) and other unknown private persons to misappropriate the national property entrusted to them and by this way the aforesaid public servants have committed criminal breach of trust of the property entrusted to them.

The above facts disclose commission of a cognizable offence. Hence, a regular case is registered against (i) Shri Amit Kumar Dhar (A-1), the then General Manager, Kunustoria Area (now working as General Manager, Pandaveswar Area), ECL, (ii) Shri Jayesh Chandra Rai (A-2), General Manager, Kajora Area, ECL, (iii) Shri Tanmay Das (A-3), Chief of Security, ECL, Asansol, (iv) Shri Dhananjay Rai (A-4), ASI, Area Security Inspector, Kunustoria, ECL, (v) Shri Debashish Mukherjee (A-5), SSI, Security In-Charge, Kajora Area, ECL, (vi) Shri Anup Maji @ Lala (A-6), Private person and unknown official of ECL, CISF, Indian Railways and other department and unknown private persons u/s 120B, 409 of IPC and section 13(2) r/w

13(1)(a) of P.C. Act, 1988 [as amended by the P.C(Amendment), Act, 2018] and endorsed to Shri Umesh Kumar, ASP, CBI, ACB, Kolkata for investigation.”

Mr. Milon Mukherjee, learned senior advocate appearing for the petitioner submitted that CBI did not have jurisdiction to investigate and/or initiate any case within the State of West Bengal in the absence of consent given in that regard by the Government of West Bengal under Section 6 of the Delhi Special Police Establishment Act, 1946 (hereinafter referred to as “DSPE Act”). Earlier, vide G.O.No. 6145-PL/PE/2A/10/88 dated 02.08.1989 issued by the Home Department, Government of West Bengal, consent was accorded to CBI for carrying out investigation within West Bengal. However, the State Government, vide a Gazette Notification dated 16.11.2018, revoked the general consent, which was accorded to the CBI, under Section 6 of the DSPE Act. In order to fortify such argument, it has been submitted that the extension of powers and jurisdiction of the CBI in any area (including Railway areas) in a State, as granted by the Central Government under Section 5 of the DSPE Act is subject to the consent of the concerned State Government as mandated under Section 6 of the DSPE Act. This, according to the petitioner, is in consonance with the powers granted to the Parliament under Entry 8 read with Entry 80 of List I of VII Schedule.

It has been further submitted that the initial notification issued under Section 5 of the DSPE Act dated 18.02.1963 did not specifically mention the phrase “Railway areas”, but only mentioned the State of West Bengal. As such, in absence of the initial notification under Section 5 of the

DSPE Act empowering the CBI to investigate in “Railway areas” within the State of West Bengal, the DSPE Act cannot be made applicable. An emphasis has been made on the phrase “Railway areas”. The term “Railway Area” as it appears in Section 6 of the DSPE Act is not defined and the statute is silent whether the CBI has unlimited and unbridled powers to investigate the cases where no territorial jurisdiction is defined. The definition of “Railways” under the Railways Act, 1989, if considered as a reference point for ascertaining the area covered by the Railways, would make it amply clear that “railway sidings” appertaining to the mines cannot be read as forming part of the “Railway areas” as contemplated under the DSPE Act. Likewise, Section 2(32A) of the Railways Act describes “Railway land” as any land in which a Government Railway has any right, title or interest. As such, by virtue of enactment of the Railway Protection Force Act, 1957 which was enacted to provide for the constitution and regulation of an armed force of the Union for the better protection and security of Railway property, passenger area and passengers and for matters connected therewith. It is the Railway Protection Force which ought to be the appropriate authority to investigate the matter of theft, pilferage etc. of the goods ‘consigned’ to the Railways which is absent in the FIR, which is the subject-matter of the case. The definition of “Railway” as provided in Section 2(31) of the Railways Act, 1989 which has been borrowed from the definition from a cognate statute (i.e. the Railways Act), according to the petitioner, is not in pari materia to the DSPE Act and is contrary to the law laid down by the Hon’ble Supreme Court in the judgment of ***Maheshwari Fish Seed Farm Vs. TN Electricity Board & Anr.*** reported in **(2004) 4 SCC 705**.

The learned senior advocate for the petitioner, in support of his contentions, relied upon the following judgments :

- i. ***Subramanian Swamy Vs. Director, CBI and Anr.*** reported in ***(2014) 8 SCC 682.***
- ii. ***A.C. Sharma Vs. Delhi Administration*** reported in ***(1973) 1 SCC 726.***
- iii. ***State of West Bengal and Ors. Vs. Committee for Protection of Democratic Rights, West Bengal and Ors.*** reported in ***(2010) 3 SCC 571.***
- iv. ***CBI Vs. V. C. Shukla & Ors.*** reported in ***(1998) 3 SCC 410.***

Mr. Kishore Datta, learned Advocate General, submitted that the State of West Bengal having withdrawn the general consent on 16.11.2018 which was accorded on 02.08.1989 under Section 6 of the DSPE Act and communicated to the CBI on 19.11.2018, the registration of the FIR on 27.11.2020 is in excess of its jurisdiction and authority. According to him, India is a federation of States as Article 1(1) of the Constitution of India provides that India is an Union of States i.e. federation of States and every federation requires division of powers between the Centre and the State. He submitted that distribution of powers is legislative which is provided under Articles 245 to 255 and administrative which are provided under Articles 256 to 261. As per his submission, legislative powers of the Parliament and the State Legislatures are provided under Articles 245 and 246 of the Constitution. He added that investigation is included in the word “police” in Entry 2 List II of VII Schedule as well as in Entry 1 of List II. Hence, investigation is a State subject under the Constitution. DSPE Act being a pre-Constitutional statute was enacted under Entry 39 of the Federal

Legislation List which corresponds to Entry 80 of List I of VII Schedule of the Constitution of India.

According to the learned Advocate General, Section 5 of the DSPE Act extends powers of CBI beyond Union Territories. However, the said power under Section 5 of the DSPE Act is subject to Section 6 of the DSPE Act which speaks about consent of State being mandatory for exercise of powers under Section 5 of the DSPE Act. The starting words of Section 6 of the DSPE Act clearly state that “Nothing contained in Section 5 shall be deemed to enable any member of DSP Establishment to exercise power and jurisdiction in any area in a State, without the consent of the Government of that State”. He submitted that a plain reading of the statute reflects that the consent of the Government of the State is mandatory and necessary for exercising of powers and jurisdictions of CBI in any area of the State.

Additionally, he submitted that consent under Section 6 of the DSPE Act flows from the federal structure of the Constitution which is held to be a basic structure of our Constitution. Federalism being one of the basic structures of the Constitution and there being demarcation of legislative powers envisaged under Article 246 of the Constitution of India, consent of the State assumes importance. Thus, *de hors* consent of the State, the exercise of such power of CBI would be in absolute violation of Federal structure and against Article 246(3) of the Constitution, as police is a State subject. In order to substantiate his argument, he relied upon judgment of the Hon’ble Supreme Court in ***State of West Bengal & Ors. Vs. Committee for***

Protection of Democratic Rights & Ors. reported in **(2010) 3 SCC 571** (paragraphs 23 to 35, 37, 38, 40).

The other argument which has been canvassed before this Court by the State of West Bengal is that Section 6 of the DSPE Act was never challenged by CBI and as such, consent of the State Government is mandatory before exercising any power within the jurisdiction of the State and no other meaning can be attributed to Section 6 of the DSPE Act. Any action of investigation in State *de hors* consent of the Government of that State by CBI is not permitted by law and as such, is illegal and *non est* in the eye of law. To that effect, learned Advocate General relied upon the judgments of the Hon'ble Supreme Court in ***Manohar Lal Sharma Vs. The Principle Secretary & Ors.*** reported in **(2014) 2 SCC 532** (paragraph 52) and ***M/S Fertico Marketing & Ors. Vs. Central Bureau of Investigation & Anr.*** reported in **(2021) 2 SCC 525** (paragraph 17).

Learned Advocate General emphasized that as the FIR/RC was registered without consent of the State of West Bengal much after the withdrawal of notification on 16.11.2018, the CBI cannot be allowed to take recourse to the date at which the preliminary enquiry was registered and as such, has no jurisdiction to investigate the offence so far as the present case is concerned. In support of his submission, learned Advocate General relied upon a judgment of the Hon'ble Supreme Court in ***Bhavesh Jayanti Lakhani Vs. State of Maharashtra & Ors.*** reported in **(2009) 9 SCC 551** (paragraphs 93 to 95, 98 to 100).

Learned Advocate General concluded his arguments by submitting that as the FIR/RC is nullity, all consequential steps, which followed, are *non est* in the eye of law.

Mr. Y. J. Dastoor, learned Additional Solicitor General, appearing for the CBI, submitted that once notification has been issued under Section 5(1) of the DSPE Act including the State of West Bengal therein, the Railway Area which forms part of the State is automatically included therein. If the State has withdrawn the consent for investigation of the cases under Section 6 of the DSPE Act, the same cannot be withdrawn with reference to the Railway Areas. Learned Additional Solicitor General referred to various provisions of the Code of Criminal Procedure in terms of investigation, arrest and seizures. It has been stressed even a part cause of action can give rise to rightly invoke the jurisdiction of the CBI to register a case.

Lastly, it has been submitted that as the investigation of the case is still continuing, the FIR cannot be dissected.

The present revisional application was heard along with CRR 810 of 2021 and CRR 1349 of 2021. None of the parties raised question regarding the issue whether the allegations made in the FIR constitutes offences or not. The sole question which has been called upon to be answered is as follows:

Pursuant to the withdrawal notification dated 16.11.2018, whether the investigation by CBI in respect of FIR which was subsequently registered, is valid and legal?

On perusal of the records of this case, it reflects that the case was registered under the provisions of Sections 120B/409 of the Indian Penal Code and Section 13(2) read with Section 13(1)(a) of the P.C. Act, 1998 [as amended by the P.C. (Amendment) Act, 2018] and the genesis of the case related to the alleged offences being committed by the (i) General Manager, Kunustoria area, ECL, (ii) General Manager, Kajora area, ECL, (iii) Chief of Security, ECL, Asansol Area, (iv) Security Inspector, Kunustoria, ECL, Security In-Charge, Kajora area, ECL and also unknown Officials of ECL, CISF and Indian Railways. During the joint inspection conducted by Vigilance Department and Task Force of ECL on several leasehold areas of ECL, evidence of extensive illegal mining in the leasehold area of ECL was found. It would not be out of place to state that Eastern Coal Fields Limited is a subsidiary of Coal India Limited which is a Government company. The officers referred to above would fall within the purview of Section 8(2) of the Central Vigilance Commission Act, 2003.

The Constitution Bench in the case of **Subramanian Swamy** (supra) while dealing with Section 6A of the DSPE Act was pleased to observe that there cannot be any rational basis which would entitle bureaucrats of Joint Secretary level and above, who are working with the Central Government should be protected under Section 6A of the DSPE Act while the same level of officers who are working in the State will not get such protection, though both classes of these officers are accused of an offence under the P.C. Act, 1988. Discrimination or differentiation must be based on pertinent and real differences, which are to be distinguished from irrelevant and artificial ones.

In paragraph 70 of the said judgment it has been held that “*every public servant against whom there is a reasonable suspicion of commission of a crime or there are allegations of an offence under the PC Act has to be treated equally and similarly under Law.*”

A co-ordinate Bench of this Court in ***Ramesh Chandra Singh and Another Vs. Central Bureau of Investigation*** reported in **2020 SCC Online Cal. 586** after taking into consideration the relevant Entries in List II of VII Schedule was pleased to hold that “*Article 246 only prescribes the powers of the Parliament and the State legislature to enact laws. The areas prescribed in List I are within the exclusive domain of the Parliament. List II is within the domain of the State legislature. List III enumerates areas which both the Parliament and the State can legislate. The Constitution inter alia aims to preserve the Federal Structure through the above provisions. It is not however a rigid demarcation. The framers of the Constitution were cautious to prescribe as above only in the context of the legislative powers of the Centre and the State. The area of operation of the Central Government and cannot be curtailed by any Central or State legislation.*”

The Court proceeded to observe that the action of the Central Government in desiring investigation into the acts and omissions of its officer who functioned under a statute which Central Government has enacted must be outside the scope of Section 6 of the DSPE Act. The Central Government having a national responsibility in zealously regulating the conduct of the persons vested with the authority to enforce Central Legislations which includes Officials of Railways, CISF and ECL. The

national interest so sought to be secured and achieved must have a rational nexus with desire of the Central Government for conducting an investigation in alleged offences of the nature complained of through a central agency.

The Co-ordinate Bench of this Court thereafter proceeded to hold that *“This Court is, therefore, of the view that, the Central Government/CBI’s power to investigate and prosecute its own officials cannot be in any way impeded or interfered by the State even if the offenses were committed within the territory of the State. This Court is conscious of the limited jurisdiction of this court under Section 482 of the CrPC and does not wish to enter into the question of propriety of withdrawal of consent which existed for 30 years.”*

This Court is not unmindful regarding the judgment dated 03.02.2021 passed in WPA 10457 of 2020, the order dated 12.02.2021 passed by the Hon’ble Division Bench of this Court in MAT 158 of 2021 with MAT 167 of 2021 and the order passed in Special Leave to Appeal (Crl.) Nos. 1620-1621/2021 wherein the Hon’ble Supreme Court, because of paucity of time to conclude the hearing before recess, directed to continue with the investigation of the case subject to a limited protection being granted to the petitioner therein by way of an interim order.

This Court has also taken into account the observations of the Hon’ble Apex Court made in paragraph 23 of the judgment in ***Kanwal Tanuj Vs. State of Bihar & Ors.*** reported in **2020 SCC Online SC 395** wherein it has been held that *“The power bestowed on Special Police Force in terms of Section 2 and 3 of the 1946 Act cannot be undermined by an executive instruction in the form of proviso”*.

In paragraph 27 of ***M/S Fertico Marketing & Ors. Vs. Central Bureau of Investigation & Anr.*** reported in **(2021) 2 SCC 525**, the Hon'ble Supreme Court has been pleased to hold that *".... there are no pleadings by the public servants with regard to the prejudice caused to them on account of non-obtaining of prior consent under Section 6 of the DSPE Act qua them specifically in addition to the general consent in force, nor with regard to miscarriage of justice."*

On an overall assessment of the facts of the present case and the law referred to above, it can be safely stated that the offenders under the Prevention of Corruption Act are to be dealt with equally. As such, the public servants whose office location may be in different States, but are associated with the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government cannot be distinguished and/or discriminated because of the location of their offices being at different States and are to be hauled up for corruption in like and similar manner uniformly throughout the country. The view of the co-ordinate Bench of this Court in ***Ramesh Chandra Singh*** (supra) that the Central Government/CBI's power to investigate and prosecute its own officials cannot be impeded or interfered by the State assumes importance and is with the spirit of the Indian Constitution.

The gravity of the offences relating to corruption and the manner in which it is to be dealt with, was considered by the legislature as well as the Hon'ble Apex Court (in a number of judgments). Pursuant to **Vineet**

Narain's case, Central Vigilance Commission Act, 2003 was enacted with the sole purpose of causing inquiries into offences alleged to have been committed under P.C. Act by certain categories of public servants of the Central Government, corporations by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government. Section 26 of the CVC Act, 2003 incorporates amendments to the DSPE Act, 1946. Consequently Section 4 of the DSPE Act was amended. Sub-section (1) of Section 4 of the DSPE Act vests the Commission with the powers to superintend investigations conducted by the officers of DSPE in respect of offences committed under the P.C. Act, 1988. The earlier sub-section (1) of Section 4 vested superintendence to the Central Government. Thus, the term 'superintendence' referred in the said provision is not merely administrative or logistic support but is a functional superintendence. Needless to state that it is only offences related to Prevention of corruption Act, 1988 which finds place in the DSPE Act and no other offences under special or general law has been referred to therein.

Moreover, the DSPE Act with its amendments have been restructured for facilitating/enabling the CBI to carry out investigations under the P.C. Act and the withdrawal notification dated 16.11.2018 is abrupt, devoid of any reasons and has the effect of shielding corrupt Central Government Officials, thereby, deterring the CBI officers to investigate offences in respect of officers falling within the category of Section 8(2) of the CVC Act, 2003. However, there may be cases where exclusively the officers belonging to the State Government are involved, in such cases the fact of the case may

demand consent under Section 6 of the DSPE Act, but the nature of allegations complained in the present case, the officers/accused who are involved and the loss which has been sustained do not involve any interference with the powers vested in the State by the Constitution.

There has been no illegality committed in the ongoing investigation and as such there is no scope for interference in the continuation of investigation relating to case No. R.C.0102020A0022 dated 27.11.2020.

Consequently, C.R.R. 1270 of 2021 is dismissed.

Pending applications, if any, are also dismissed.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)