

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

WPA (P) 360 of 2022

Reserved on: 24.08.2022
Pronounced on: 13.09.2022

Sujit Chakraborty

...Petitioner

-Vs-

State of West Bengal and Others

...Respondents

Present:-

Mr. Abhrotosh Mazumder, Sr. Advocate
Mr. Rajdeep Mazumder,
Mr. Moyukh Mukherjee, Advocates
... for the petitioner

Mr. Kishore Datta, Sr. Advocate
Mr. Ayan Bhattacharya,
Mr. Soumen Mohanty,
Mr. Piyush Kumar Ray,
Mr. Sudhadev Adak, Advocates
... for the State

Mr. Billwadal Bhattacharyya,
Mr. Ayanabha Raha, Advocates
... for the CBI

Mr. Kumar Jyoti Tewari,
Mr. Tapan Kumar Bhanja, Advocates
... for the respondent No. 6

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. By this public interest petition, the petitioner has prayed for a direction to transfer the investigation in Case No. 241/2022 dated

20.05.2022 Kalyani Police Station to the Central Bureau of Investigation (for short, 'CBI').

2. On the basis of the complaint dated 20th of May, 2022 made by one Sariful Islam to the Inspector-in-charge, Kalyani Police Station, the First Information Report No. 241/2022 dated 20.05.2022 for offence under Sections 420/406/120B/34 of the IPC and Sections 7/7A/8/11/13 of the Prevention of Corruption Act, 1988 (for short, 'the PC Act') has been registered. The allegation in the FIR is that employment has been illegally provided to the family members of Member of Legislative Assembly of one of the political party in All India Institute of Medical Sciences, Kalyani. The allegation is that leaders of one of the political party including accused public servant and Director of the AIIMS, Kalyani have misused their position and powers to make appointment of their near and dear ones in AIIMS, Kalyani. The FIR and allegation are based upon the newspaper reporting.

3. Submission of the learned Counsel for the petitioner is that the AIIMS has been constituted under the Act of the Parliament. Referring to various provisions of the All India Institute of Medical Sciences Act, 1956, and All India Institute of Medical Sciences Rules, 2019, he has submitted that the AIIMS is financially, functionally and administratively controlled by the Central Government. His further submission is that the offence under the PC Act has been registered involving the officers and employees of the Central Government and Central Vigilance Commission (for short, 'CVC') has been vested with the power to exercise superintendence over the functioning of Delhi Special Police Establishment (for short, 'DSPE') for

investigation of offence committed under the PC Act and CVC has superintendence and control over the DSPE and CBI may act as an extended arm of CVC, therefore, in respect of establishment owned and controlled by the Central Government, the investigation should be carried out by the CBI. In support of his submission, learned Counsel for the petitioner has placed reliance upon the Single Bench judgment of this Court in the matter of **Vinay Mishra vs. Central Bureau of Investigation and Others** reported in **2021 SCC OnLine Cal 2160**.

4. Learned Counsel for the State has opposed the writ petition by submitting that under the List II, investigation is primarily a State subject and there is no allegation of bias against the investigating agency and also there is no legal bar to conduct the investigation by the State investigating agency in such cases. He has also questioned the locus of the petitioner to file the present public interest petition.

5. Learned Counsel for the CBI has raised an issue that provisions contained in Section 17(A) of the PC Act have not been complied with and that the investigation by the Sub-Inspector is in contravention of the provisions contained in Section 17 of the PC Act.

6. Learned Counsel appearing for the AIIMS has also submitted that single source selection is permissible under the Rule 194(iv) of the General Financial Rules, 2017 and no illegality has been committed in making the appointment.

7. We have heard the learned Counsel for the parties and perused the record.

8. Section 17 of the PC Act provides for the person authorized to investigate the offence punishable under the Act as under:

“17. Persons authorised to investigate.—

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,—

- (a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;
- (b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;
- (c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank,

shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

Provided further that an offence referred to in clause (b) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

17-A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.—(1) No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge

of his official functions or duties, without the previous approval—

- (a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;
- (b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;
- (c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.”

9. In terms of the first proviso to the Section, Inspector of Police authorized by the State Government by general or special order is competent to investigate. It has been disclosed by the State that vide Control Org No. 385/CS dated 21.05.2022, the State of West Bengal has empowered the Inspector of Police to conduct the investigation of offence under the PC Act in the State of West Bengal. It has also been disclosed that the investigation in the present case is being carried out by one Ashim Mondal who is an Inspector of Police.

10. So far as the DSPE Act is concerned, under Section 2, the Central Government is empowered to constitute a special force to be called Delhi Special Police Establishment for investigation in any Union Territory. In terms of Section 5, the jurisdiction of members of Delhi Special Police Establishment to investigate the specified offences can be extended to any area in a State not being a Union Territory. Section 6 of the Act relates to consent of the State Government to exercise powers and jurisdiction.

11. None of the provisions of PC Act or DSPE Act exclude the jurisdiction of the State investigating agency to investigate the offence registered against the employees of the Central Government or employees working in an establishment owned or controlled by the Central Government, if otherwise the State investigating agency is empowered to do so.

12. Hon'ble Supreme Court in the matter of **A.C. Sharma vs. Delhi Administration** reported in (1973) 1 SCC 726, has considered the issue of investigation relating to the similar offence contained in Section 5 of the Prevention of Corruption Act, 1947 where the accused was an employee of the Central Government and an issue was raised that the investigation by Anti-Corruption Branch was without jurisdiction because only the police agency under the DSPE Act had the jurisdiction. The Hon'ble Supreme Court after considering the scheme of DSPE Act has held that the scheme of DSPE Act does not either expressly or by necessary implication divest the regular police authorities of their jurisdiction, powers and competence to investigate into offences under any other competent law by holding that:

“13. Turning to the D.S.P.E. Act, it extends to the whole of India. For the constitution and powers of the establishment, we have to turn to Section 2 of this Act which reads:

“2. Constitution and powers of Special Police Establishment.—(1) Notwithstanding anything in the Police Act, 1861, the Central Government may constitute a Special Police Force to be called the Delhi Special Police Establishment for the investigation in any Union territory of offences notified under Section 3.

(2) Subject to any orders which the Central Government may make in this behalf, members of the said Police Establishment shall have throughout any Union territory in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which Police Officers of that Union territory have in connection with the investigation of offences committed therein.

(3) Any member of the said 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 in any Union territory any of the power of the officer-in-charge of a police station in the area in which he is for the time being and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station.”

Section 3 which empowers the Central Government to specify the offences to be investigated by the D.S.P.E. has already been set out. The Notification, dated November 6, 1956, referred to earlier specifies numerous offences under various enactments including a large number of ordinary offences under IPC clauses (a) to (j) of this

notification take within their fold offences under a number of statutes specified therein. Clause (k) extends the sweep of this notification by including in its scope attempts, abetments and conspiracies in relation to or in connection with offences mentioned in clauses (a) to (h) and also any other offence committed in the course of those transactions arising out of the same facts. It may also be stated that after 1956 in a number of further notifications the list of the offences specified under Section 3 has increased manifold. We consider it unnecessary to refer to them in detail. According to Section 4 the superintendence of D.S.P.E. vests in the Central Government and Section 5 empowers the Central Government to extend to any area in a State not being a Union Territory the powers and jurisdiction of members of this establishment for the investigation of any offences or classes of offences specified under Section 3. Subject to the orders of the Central Government the members of such Establishment exercising such extended powers and jurisdiction are to be deemed to be members of the Police force of that area for the purpose of powers, functions, privileges and liabilities. But the power and jurisdiction of a member of D.S.P.E. in such State is to be exercised only with the consent of the Government of the State concerned. The scheme of this Act does not either expressly or by necessary implication divest the regular police authorities of their jurisdiction, powers and competence to investigate into offences under any other competent law. As a general rule, it would require clear and express language to effectively exclude as a matter of law the power of investigation of all the offences mentioned in this notification from the jurisdiction and competence of the regular police authorities conferred on them by Cr.P.C. and other laws and to vest this power exclusively in the D.S.P.E. The D.S.P.E. Act seems to be only permissive or empowering, intended merely to enable the D.S.P.E. also to investigate into the offences specified as contemplated by

Section 3 without imparting any other law empowering the regular police authorities to investigate offences.”

13. The same issue came up before the Division Bench of the Madhya Pradesh High Court in the matter of **Ashok Kumar Kirtiwar vs. State of M.P.** reported in **2001 SCC OnLine MP 83**, wherein the Division Bench examined the issue if the offence of bribery and corruption against the Central Government employee posted in the State could be investigated by regular Police Force or Special Police Establishment. Negating the contention and considering the Section 17 of the PC Act, the Division Bench held that:

“9. Section 17 refers to the Police Officers of certain ranks who alone can investigate the offences under the Act without making any reference to the offender as to whether he is connected with the affairs of the Union or of the State. Except in clause (a) which refers to the Inspectors of Delhi Special Police Establishment, the entire investigation machinery referred to under section 17 is the State Police and the only rider placed is that the investigating officer has to be of the rank of Dy. S.P./A.C.P. or at least Inspector authorised in this behalf by the State Government by general or special order. There is absolutely no provision in the Act making any discretion between the employees of the Union or the State in the matter of investigation.

10. Section 156 of the Code of Criminal Procedure authorises the police to investigate the cognizable offence without the order of a Magistrate. The offences under the P.C. Act are also cognizable and can, therefore, be investigated by the police. The only rider is that investigation can be had only by a police officer of the rank specified in section 17. The word “Police Station” has been defined in clause (s) of section 2 of Criminal Procedure

Code to mean “any post or place declared generally or specially by the State Government to be a Police Station”. M.P. Special Police Establishment is also a wing of State Police created under section 2 of the M.P. Act of 1947. The State Government by Notification No. F/15-2(ii)-89-XLIX-10 dated 28th November, 1989 has declared the Office of the Director of Special Police Establishment, M.P. Bhopal, to be the Police Station for the purposes of certain offences including those under the P.C. Act. Further by a separate Notification No. F/15-2(iii)-89-XLIX-10 dated 28th November, 1989 issued in exercise of power conferred by First Proviso to section 17 of the P.C. Act, all Inspectors of Special Police Establishment have been authorised to investigate the offences under the Act.”

14. The Division Bench of Madhya Pradesh High Court further held that:

“13. The contention that the Delhi Special Police Establishment Act, 1946 confers *exclusive* jurisdiction on the Special Police Force created under that Act to investigate the offences of bribery and corruption committed by the Central Government Employees, is also wholly misplaced. While this Central Act of 1946 does provide for an agency for investigation of such offences committed by the Central Government Employees, there is however, no provision in the Act to exclude jurisdiction of Police Officers of various States to investigate the said offences when committed by such employees in their States. The scope of the Central Act of 1946 is rather limited inasmuch as it provides for the investigation of such offences when committed by the Central Government Employees only. The Special Police force under this Central Act cannot investigate the offences committed by the State Government Employees. The legal position in the matter is made luculent by the Supreme Court in *A.C. Sharma vs. Delhi*

Administration, AIR 1973 SC 913 wherein almost similar fact situation, the Apex Court held:

“The setting up of Delhi Special Police Establishment by the Central Government under the D.S.P.E. Act does not by itself deprive the anti-corruption branch (Delhi Administration) of its jurisdiction to investigate the offence of bribery and corruption against Central Government employee in Delhi.”

14. The P.C. Act of 1988 is a social legislation intended to curb illegal activities of public servants. As observed in *Ramsingh (2000) 5 SCC 88*, “The Act is designed to be liberally construed so as to advance its object. Procedural delays and technicalities of law should not be permitted to defeat the object sought to be achieved by the Act. The over-all public interest and the social object is required to be kept in mind while interpreting various provisions of the Act and deciding cases under it.” Our view of the matter is also consistent with the object of the P.C. Act.

15. It will be thus seen that the Central Act of 1946 does not deprive the State Police, be it a regular police force or the S.P.E. of its jurisdiction to investigate the offences of bribery and corruption against the Central Government employees posted in the State of Madhya Pradesh. We thus answer the question extracted above in *affirmative*.”

15. Having regard to the aforesaid, we find that the competent officer of the State police can investigate the offence in question. Another question raised by the Counsel for the petitioner is that the AIIMS, Kalyani, is effectively controlled by the Central Government and CVC has the power to exercise control over the function of Delhi Special Police Establishment for investigation of the offence alleged to have been committed under the PC Act and that CBI may act as an extended arm of CVC. We have been taken through the provisions of

the AIIMS Act, 1956, Rules, DSPE Act and Central Vigilance Commission Act, 2003, but none of the provisions from these Acts and Rules have been pointed out to show that only the CBI has the jurisdiction to investigate the offence in such a case.

16. That apart, we have also noticed that the respondent Nos. 1 to 4 in their affidavit in opposition have placed on record the progress of investigation in the matter. There is no allegation of bias or lapse in investigation in the present case which could furnish a ground to transfer the investigation to the CBI.

17. Counsel for the petitioner has placed reliance upon the Single Bench judgment in the case of **Vinay Mishra (supra)**, but in that case the question examined was “pursuant to the withdrawal notification dated 16.11.2018 whether the investigation by the CBI in respect of FIR which was subsequently registered was valid and legal?” Hence, the judgment relates to an altogether different issue in different fact situation.

18. Learned Counsel for the respondents have also raised the issue of locus of the petitioner placing reliance upon the judgments of the Hon’ble Supreme Court in the matter of **Rajiv Ranjan Singh ‘Lalan’ (VIII) and Another vs. Union of India and Others** reported in (2006) 6 SCC 613, **Simranjit Singh Mann vs. Union of India and Another** reported in (1992) 4 SCC 653, **Subramanian Swamy and Others vs. Raju Through Member, Juvenile Justice Board and Another** reported in (2013) 10 SCC 465, **Janata Dal vs. H.S. Chowdhary and Others** reported in (1992) 4 SCC 305, **Ashok Kumar Pandey vs. State of W.B.** reported in (2004) 3 SCC 349. The

petitioner has failed to disclose his full credential in the petition to satisfy the test of locus.

19. So far as the issue of compliance of Section 17A of the PC Act is concerned, we have no doubt that the said provision will be duly taken note of by the investigating agency.

20. Hence, we are of the opinion that no ground is made out to allow the prayer made in this public interest petition which is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
13.09.2022

PA(SS)

(A.F.R./N.A.F.R.)