



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.M.O. No. 17 of 2022

Reserved on : 25.04.2023

Date of decision : 10.05.2023

Abhishek Sharma

Petitioner

Versus

Sate of H.P.

Respondent

Coram :-

Ms. Jyotsna Rewal Dua, Judge

Whether approved for reporting?¹ Yes

For the Petitioner : Mr. B.C. Negi, Senior Advocate, with
Mr. Udit Shaurya Kaushik, Advocate

For the Respondents : Mr. Y.P.S. Dhaulta, Additional Advocate General

Jyotsna Rewal Dua, Judge

Petitioner is a Motor Vehicle Inspector (MVI) in the office of Regional Transport Authority, District Bilaspur, H.P. He is co-accused in FIR No. 5 of 2021, dated 28.11.2021, registered by the State Vigilance and Anti Corruption Bureau, District Mandi, H.P. under Sections 7 and 7A of the Prevention of Corruption Act, 1988 (in short the Act). In the instant petition, he seeks quashing of this FIR.

¹ Whether reporters of print and electronic media may be allowed to see the order? Yes.

2. As per the respondent, **following facts** led to registration of the FIR :-

2(i) On 26.11.2021, a source report from general public Mandi was received in Police Station State Vigilance and Anti Corruption Bureau (SV & ACB), Mandi that post of MVI was lying vacant in District Mandi. MVI from other district was being deputed in District Mandi for passing of vehicles and driving tests. It was alleged that MVI was passing the vehicles without following proper procedure and also taking bribes through touts.

2(ii) A team of officials of SV&ACB Mandi proceeded to Kansa ground, Dadar on 27.11.2021, where exercise of passing of vehicles was being carried out. The team found three vehicles bearing registration Nos. HP-67-8900 (of petitioner), HP-65-8784 and HR-05Y-4392, on the spot. Two persons (co accused Pritam Kumar and Vinod Kumar) were seen carrying files in these vehicles. A lot of people were seen gathered around the vehicles. The team noticed that petitioner was being assisted by co-accused persons, who were not government servants. The co-accused persons were seen collecting the files from people gathered there for passing of vehicles and carrying them to the petitioner. The petitioner was also found to have deputed another private person for making necessary entry in the vehicles passing register.

2(iii) The above working style and activities of the petitioner and co-accused persons made the police officials suspicious. The three vehicles found on spot departed at different times. Due to this reason, only one vehicle numbered HP-65-8784 could be followed by the team. While chasing the car, the officials stopped near Lake View Point BBMB Lake, Sundernagar, District Mandi at 6.00 p.m. Petitioner's vehicle No.HP-67-8900 and the other vehicle numbered HR-05Y-4392 were already parked there. On the spot, all the vehicles were checked from outside and inside. Personal search of the petitioner and co-accused persons was also carried out. During personal search, Rs. 2,000/- from the petitioner, Rs. 45,300/- from co-accused Pritam Kumar and Rs. 40,320/- from co-accused Vinod Kumar were recovered. An amount of Rs. 25,500/- was found kept inside the files placed on the rear seat of vehicle No. HP-65-8784. 46 files relating to vehicles, 24 registration certificates, 3 driving licences and a rubber stamp of SDM Sarkaghat, District Mandi were recovered from vehicle No. HP-65-8784. 6 files of vehicles were recovered during the search of vehicle No. HR-05Y-4392. 13 files and one vehicles passing entry register were recovered from vehicle No. HP-67-8900. According to the respondents, the petitioner and co-accused persons could not give satisfactory answers to the inquiries made by the police officials about the recovery of amount during their personal

search and also about the files and documents recovered from their vehicles.

2(iv) As per the respondent, recovery of money, files and documents from the vehicles not only of the petitioner, but also from the other co-accused persons, who were seen aiding the petitioner during and after passing of the vehicles was suggestive of the fact that there was an implied demand of bribe impugning the conduct of the petitioner, hence FIR was registered.

3. Learned Senior Counsel for the petitioner submitted that the petitioner is accused of commission of offences under the Prevention of Corruption Act. The impugned acts were allegedly carried out by the petitioner in discharge of his official duties. The actions questioned included decisions taken and recommendations made by the petitioner. Hence, section 17A of the Act was attracted, but the respondent did not take requisite prior sanction under this Section before conducting the investigation, therefore, the FIR cannot proceed further. It is required to be quashed. This submission has been countered by the **learned Additional Advocate General** by submitting that in the given facts, on the basis of which, the FIR was registered, prior sanction under Section 17A of the Act was not required to be obtained. Both the sides have placed reliance upon certain judgments.

4. Observations

The main plank of the petitioner in seeking quashing of the FIR is alleged contravention by the respondents of Section 17A of the Act. The Section reads as under :-

“17A. Enquiry or Inquiry or investigation of offences relating to recommendations made or decision taken by public servant in discharge of official functions or duties.—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 relating 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.”

As per the above section, no police officer can conduct any inquiry or enquiry or investigation into any offence alleged to have been committed by a public servant under the Act, where the offence alleged is relating to any recommendation made or decision taken by such public servant in discharge of his official functions or duties without the previous approval

.....of authorities mentioned in Clauses (a) (b) and (c) of the section , as the case may be.

4(i) Learned Senior Counsel for the petitioner submitted that section 213 (1) of the Motor Vehicles Act authorizes the State Government to establish a Motor Vehicles Department and appoint as officers thereof such persons as it thinks fit for the purpose of carrying into effect the provisions of the Act. Notification dated 10.06.2010, issued by Department of Transport, Government of Himachal Pradesh, outlines Job Profile, duties and responsibilities of several posts in the department of Transport Himachal Pradesh. The job profile of Motor Vehicle Inspector (MVI) stated therein is as under :-

“13. MOTOR VEHICLE INSPECTOR

- i) To issue fitness certificate after checking the vehicle in a proper way.
- ii) To conduct driving test and issue certificates in this regard to the applicant.
- iii) To assist Assistant Commissioner Transport (Technical) as and when required.”

According to the learned Senior Counsel, the petitioner in his capacity as MVI was discharging his official duties on 27.11.2021 i.e. in respect of issuance of vehicles' certificates after properly checking the vehicles, conducting driving tests and issuing certificates accordingly. It was in furtherance of discharge of these official duties that the files were prepared by him and the record was retained by him. It was in respect of discharge of these duties by the petitioner that the respondent had received source

information about alleged misconduct and improper discharge of duties by the petitioner. The source report received by the respondent was concerning the decisions taken and the recommendations made by the petitioner in discharge of his official duties. Hence, provisions of Section 17A of the Act became applicable. The respondent was required to obtain prior approval of the competent authority before conducting inquiry or investigation into the offence alleged against the petitioner. This course having not been adopted by the respondent, the FIR was liable to be quashed.

4(ii) In **(2020) 2 SCC 338 (Yashwant Sinha & Others Vs. Central Bureau of Investigation through its Director and another)**, it was observed that Section 17A of the Act constituted bar to any inquiry or enquiry or investigation unless there was previous approval. Relevant paragraphs from the judgment are as follows :-

“84. In terms of [Section 17A](#), no Police Officer is permitted to conduct any enquiry or inquiry or conduct investigation into any offence done by a public servant where the offence alleged is relatable to any recommendation made or decision taken by the public servant in discharge of his public functions without previous approval, inter alia, of the authority competent to remove the public servant from his Office at the time when the offence was alleged to have been committed. In respect of the public servant, who is involved in this case, it is clause (c), which is applicable. Unless, therefore, there is previous approval, there could be neither inquiry or enquiry or investigation. It is in this context apposite to notice that the complaint, which has been filed by the petitioners in Writ Petition (Criminal) No. 298 of 2018, moved before the first respondent-CBI, is done after [Section 17A](#) was inserted. The complaint is dated 04.10.2018. Paragraph 5 sets out the relief which is sought in the complaint which is to register an FIR under various provisions. Paragraphs 6 and 7 of the complaint are relevant in the context of [Section 17A](#), which reads as follows:

“6. We are also aware that recently, Section 17(A) of the act has been brought in by way of an amendment to introduce the requirement of prior permission of the government for investigation or inquiry under the [Prevention of Corruption Act](#).

7. We are also aware that this will place you in the peculiar situation, of having to ask the accused himself, for permission to investigate a case against him. We realise that your hands are tied in this matter, but we request you to at least take the first step, of seeking permission of the government under [Section 17\(A\)](#) of the Prevention of Corruption Act for investigating this offence and under which, “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”.

85. Therefore, petitioners have filed the complaint fully knowing that [Section 17A](#) constituted a bar to any inquiry or enquiry or investigation unless there was previous approval. In fact, a request is made to at least take the first step of seeking permission under [Section 17A](#) of the 2018 Act. Writ Petition (Criminal) No. 298 of 2018 was filed on 24.10.2018 and the complaint is based on non-registration of the FIR. There is no challenge to [Section 17A](#). Under the law, as it stood, both on the date of filing the petition and even as of today, [Section 17A](#) continues to be on the Statute Book and it constitutes a bar to any inquiry or enquiry or investigation. The petitioners themselves, in the complaint, request to seek approval in terms of [Section 17A](#) but when it comes to the relief sought in the Writ Petition, there was no relief claimed in this behalf.”

[Section 17A](#) of the Act was inserted by way of amendment of the Act in the year 2018. The purpose behind enactment of [Section 17A](#) of the Act is to give protection to public servants from the threat of malicious inquiry/investigation for taking honest decisions. The aim of the provision is to ensure that honest public servants are not subjected to frivolous complaints and to make available a screening mechanism for them. [**Re: Venugopal V Vs. State of Kerala** decided on 08.09.2021 (CRL. MC No. 3765 of 2021)].

In (2012) 3 SCC 64 Subramanian Swamy Vs. Dr. Manmohan Singh and another, it was held that procedural provisions relating to sanction must be construed in such a manner as to advance the causes of honesty, justice and good governance as opposed to escalation of corruption.

In Shankara Bhat Vs. State of Kerala (CRL.MC No. 7542 of 2018), decided on 27.08.2021, the question that arose for consideration before the High Court was whether previous approval from the competent authority needed to be obtained for every enquiry, inquiry or investigation, into every offence committed by a public servant. Whether the provision was an omnibus, all pervasive pre-requisite for every enquiry or inquiry or investigation into every act done by the public servant in discharge of his official function. The Court held as under :-

“19. Section 17A PC Act has to be analysed in the above background. The most crucial part of section 17A provides that previous approval is required in relation to 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". It seems that the above part of the section is the most crucial part of the section, since it imposes a rider on the otherwise absolute power under section 17A that enquiry, inquiry or investigation into every act needed prior approval. It is clear that it is not that every offence alleged to have been committed by the public servant under the Act that needed prior approval. Prior approval under section 17A was required only where the alleged offence was relatable to "any recommendation made or decision taken by the public servant". This seems to be the heart and soul of the above section. It is clear that the Parliament has consciously used the above words. If the intention of the Parliament was to impose a pre condition that every enquiry, inquiry or investigation into every allegation of offence against a public servant

the authority. This purposive interpretation seems to be in consonance with the scope of [section 17A](#).

23. An identical view was taken by a single judge of Delhi High Court in [Devendra Kumar v. CBI & others \(W.P.\(Criminal\) No. 3247/2018 and connected matters\)](#). In that, the scope of [section 17A](#) PC Act was under consideration. The complainant alleged that he was being harassed by the investigating officer and that the investigation officer demanded huge amount from him for not charging a case against him. On the question whether the prosecution of the police officer required sanction, it was held by the Delhi High Court that the alleged promise to the complainant to ultimately give him relief cannot be said to be one done in discharge of the official function or duties of the public servant. It was held that the bar to enquiry or inquiry or investigation under [section 17A](#) of the PC Act is apropos such alleged offence as may be relatable to any recommendation made or decision taken by a public servant in discharge of his official function or duties. In the present case, there was no recommendation or decision on record by public servant in discharge of his official functions. It was only such acts done in discharge of the official functions that would have become the subject matter for seeking approval of the employer. It was held that a public servant cannot possibly be left to be under constant apprehension that bona fide decisions taken by him would be open to enquiry, inquiry or investigation on the complaint of a stranger. [Section 17A](#), as it reads, and the legislative intent can only be to protect a public servant in the bona fide discharge of official functions or duties. However, when the act of a public servant is ex facie criminal or constitutes an offence, prior approval of the Government would not be necessary, it was held.”

A reading of Section 17A makes it evident that prior approval for conducting any enquiry, inquiry or investigation against public servant is required only when the offence alleged is relatable to a decision taken or recommendation made by the public servant in discharge of his official functions or duties with the rider 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. Section 17A of the Act has to be interpreted in a meaningful manner that bolsters the fight against corruption and at the same time protects honest officials.

4(iii) In the instant case, the respondent had received a source report i.e. a complaint from general public with an allegation that the post of MVI in District Mandi was lying vacant. That the MVIs from other districts were carrying out the duties for District Mandi and in the process were accepting bribe either themselves or through their conduits. There was no specific complaint about any decision or recommendation made by MVI. No MVI was named in the complaint. The respondent set out to examine the veracity of the allegations levelled in the complaint. A team of police officials was constituted for the purpose. This team visited the spot and found that the petitioner, an MVI of District Bilaspur, in the course of discharging his official duties in District Mandi had taken active assistance of some private persons, who were not government servants (co-accused persons). The modus operandi of the petitioner, the other accused persons and the evidence gathered by the team positively suggested that the petitioner was taking undue advantage in performing his public duties. It was not any recommendation or decision made by the petitioner that led to registration of the FIR. But the complaint received by the respondent was enquired into on the spot. The respondent gathered prima-facie evidence that the

petitioner was taking undue advantage from others in performing his public duties. That despite discharging his official duties, the petitioner was being actively assisted by two persons, who were not government servants. That the evidence collected by the respondent during personal search of the petitioner and co-accused persons, the documents and other recoveries made from the vehicles used by accused persons also suggested demand of bribe by the petitioner. As per the status report, the respondent has also investigated many persons whose names figured in the files recovered from the three vehicles. Many of them have statedly disclosed that co-accused persons had presented themselves as authorized Transport service providers. Statements of these persons have been recorded under Section 161 Cr.P.C. Investigation in the matter is stated to be complete. As per status report, final police report is being prepared for its presentation in the Court.

5. Conclusion

The investigation carried out by the respondent was not in relation to any specific decision or recommendation made by the petitioner of the nature contemplated under Section 17A of the Act. A source report of public with general allegations of illegal, improper exercise of powers, in violation of prescribed procedure, by taking bribes through touts by Motor Vehicle Inspectors deployed in District Mandi, was enquired into. The

evidence that came to fore in this investigation was considered sufficient to lodge the FIR.

In view of given facts of the case, prior approval under Section 17A of the Act was not required. Hence, prayer of the petitioner for quashing of FIR on the ground that requisite prior approval under Section 17A of the Prevention of Corruption Act was not obtained, sans merits. This petition fails and is accordingly dismissed. The miscellaneous applications, if any, also stand disposed of.

10th May, 2023 (K)

Jyotsna Rewal Dua ,
Judge

High Court of J&K