

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 414 OF 2020

(Arising out of SLP(Crl.) No. 9876 of 2018)

Kanwal Tanuj

....Appellant(s)

Versus

State of Bihar & Ors.

....Respondent(s)

J U D G M E N T

A.M. Khanwilkar, J.

1. Leave granted.
2. This appeal emanates from the judgment and order dated 17.9.2018 passed by the High Court of Judicature at Patna (for short, “the High Court”) in Criminal Writ Jurisdiction Case (CWJC) No. 879/2018, whereby the writ petition filed by the appellant for quashing of first information report (FIR) being R.C. A.C.-I, 2018A 0002 dated 21.2.2018 registered by the Central Bureau of Investigation (for short, “the CBI”) under Sections 120B, 420, 467, 468 and 471 of the Indian Penal Code (for short,

“the IPC”) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, “the PC Act”) came to be rejected.

3. The principal ground canvassed by the appellant before the High Court was that he being an officer of the Indian Administrative Service (IAS) employed in connection with the affairs of the Government of Bihar as District Magistrate at Aurangabad District (State of Bihar) could not be subjected to investigation by the CBI without the prior consent of the State.

4. The appellant has been named as an accused alongwith one Shri C. Sivakumar, CEO, Bhartiya Rail Bijli Company Limited (for short, “BRBCL”), Nabinagar, District Aurangabad, Bihar on the basis of FIR registered by the CBI pursuant to information received from a reliable source alleging as follows: -

“A reliable source information has been received that Bhartiya Rail Bijlee Company Limited (BRBCL), a subsidiary of NTPC Ltd. is constructing four units of 250 MW at Nabinagar in Aurangabad District (Bihar). The joint venture project has been developed by Bhartiya Rail Bijlee Company Limited (BRBCL) with NTPC having 74 percent share, while the Ministry of Railways with the remaining 26 percent. Indian Railways would get 90 percent and the state of Bihar would get ten percent of the power generated from BRBCL’s plants. The construction work of BRBCL was proposed in the 2005-06 Union Budget and the Central Govt. approved the company in February 2007 but work on the plant was delayed due to land acquisition problems at Nabinagar. Actual work on BRBCL power plants started in 2008-09. The four units of BRBCL plant are proposed to be

constructed on around 1,500 acres of land at Nabinagar and all of them are to be completed at a revised cost of around Rs.8,100 crore.

2. Information further revealed that large scale corruption and siphoning of government funds has taken place in the land acquisition for the plant of Bhartiya Rail Bijlee Company Limited (BRBCL) by the BRBCL officials in criminat connivance with Local District Administration. A specific instance has been formed by source in this regard pertaining to acquisition of tL.57 acre land of Khata No.12, plot No.1, of Mauja Kajrine for the Thermal Power Project at Nabinagar in the District of Aurangabad (Bihar). The proposal to acquire land has already been approved by the State Government of Bihar along with the compensation amount payable to the owner of the acquired lands.

3. Information also revealed that initially vide letter No.452, dated 22.06.2015, Circle Officer, Nabinagar informed Chief Executive Officer, BRBCL, Nabinagar that there was no claimant for land 7.09 acre pertaining to Khata No.12, plot No.1 of Mauja Kajrine. In this regard BRBCL issued a letter to Circle Officer, Nabinagar on 15.01.2016 that company had no objection if aforesaid left out land was transferred to company (BRBCL).

4. It has been further revealed by a source that Shri C. Shiv Kumar, CEO, BRBCL, Nabinagar entered into a criminal conspiracy with Shri Kanwal Tanuj, District Magistrate, Aurangabad District (Bihar), other unknown officers/officials of BRBCL, local District Administration and Shri Gopal prasad singh (now deceased). In furtherance of the said criminal conspiracy, Shri Kanwal Tanuj, District Magistrate, Aurangabad District (Bihar) got false documents of Khata No.12, plot No.1 of Mauja Kajrine prepared in respect of one shri Gopal prasad singh (now deceased) s/o Late Kesho Prasad singh, R/o-Nabinagar District- Aurangabad (Bihar). Some false receipts of Lagan for the period 1988-89 to 2016-17, some other related papers/returns of above land shown to be purchased from Shri Mukund Lal (Jamindar), who was never jamindar (Land lord) of the area were prepared and submitted for claim/compensation in the name of Gopal Prasad Singh (now deceased).

5. It was then fraudulently directed by Shri Kanwal Tanuj, DM, Aurangabad that 7.45 acre land in Khata No.12, Plot No.1 of Mauja Kajrine be recorded in the name of Shri Gopal Prasad Singh (now deceased) and the matter

may be further processed accordingly. Circle Officer, Nabinagar sent a letter No.74, dated 11.03.2017 to Chief-Executive officer BRBCL for purchasing of the land from the owner Shri Gopal Prasad Singh (now deceased), Circle Officer, Nabinagar thereafter issued another letter dated 25.03.2017 to BRBCL recalling his previous letter dated 22.06.2015 and informed that 7.45 acres out of the total land in Khata No.12, plot No.1 of Mauja Kajrine has been registered in name of Shri Gopal Prasad Singh. The circle officer further informed BRBCL that 6.545 acres falling in the Ash Dyke area in the above mentioned plot was being earmarked/acquired for the BRBCL and directed the BRBCL to purchase the said land from the owner Shri Gopal Prasad Singh and 0.905 acres from the Govt. Land was being transferred to BRBCL for the purpose of the plant.

6. Source information also revealed that as per procedure possession of land is taken in the presence of land owners after identification of their land but when BRBCL officers along with other officers visited the site on 11 & 12.04.2017 for possession of the aforesaid land, the claimant Gopal Prasad Singh (now deceased) allegedly could not identify his own land and many villagers, who gathered there opposed that the said land was not owned by Shri Gopal Prasad Singh (now deceased). In this regard a video/CD was also prepared at the spot. In furtherance of the conspiracy, vide letter 1707 dated 26.05.2017 Shri Kanwal Tanuj, DM, Aurangabad thereafter directed BRBCL to make payment of compensation for the land (Khata No.12, Plot No.1, of Mauja Kajrine) to Gopal Prasad Singh (now deceased) within 48 hours. Vide letter No.151, dated 12.06.2017 Shri C. Shiv Kumar, CEO, BRBCL, Nabinagar made payment of Rs.2,07,84,583/- to Shri Gopal Prasad Singh (now deceased) despite having the knowledge that Shri Gopal Prasad Singh could not identify the land and many villagers who had gathered there opposed that the said land was not owned by Shri Gopal Prasad Singh (now deceased).

7. Source has further informed that an a/c. Payee Cheque No.382774, dated 29.05.2017 for Rs.2,07,84,583/- was issued from account No.30450307785 by Bhartiya Rail Bijlee Co. Ltd. in favour of Shri Gopal Prasad Singh (now deceased) and same was credited in a/c number 6082000100097579 of Shri Gopal Prasad Singh (now deceased) maintained in SBI, Nabinagar branch, District-Aurangabad (Bihar). This amount was transferred via RTGS/SBINR520170529 in

this account and subsequently the money was withdrawn. Thus, BRBCL was caused a wrongful loss to the tune of Rs.2,07,84,5831- and corresponding wrongful gain to themselves.

8. The above facts and circumstances prima-facie disclose commission of offences punishable U/s. 120-B, 420, 467, 468 & 471 IPC and Section 73(2) r/w Section 13 (1) (d) of the P.C. Act, 1988 against Shri C. Shiv Kumar, CEO, BRBCL Nabinagar, Shri Kanwal Tanuj, DM, Aurangabad and other unknown public servants of BRBCL and local administration and other private persons.

A Regular case is, therefore, registered and entrusted to Shri Pramod Kumar, Dy. Supdt. of police CBI, AC-I, New Delhi Supdt. of Police, CBI/AC-I, New Delhi for investigation and report.”

5. As aforesaid, the appellant filed writ petition for quashing of the said FIR on the ground that it does not disclose any criminal offence against the appellant and for a declaration that it has been lodged against the appellant (a State Government employee), without prior permission of the State Government and was thus in violation of Section 6 of the Delhi Special Police Establishment Act, 1946 (for short, “the 1946 Act”). In other words, the FIR has been registered without jurisdiction and is void *ab initio*.

6. The High Court after considering the grounds of challenge, proceeded to hold that BRBCL is an “affiliate” or “associate” in relation to National Thermal Power Company (NTPC) Ltd. and the Railways respectively. The registered office of BRBCL was in the

Union Territory of Delhi (National Capital Territory of Delhi) and the allegation regarding defrauding the said undertaking (BRBCL) and siphoning of funds had occurred in the Union Territory of Delhi (National Capital Territory of Delhi). The funds for implementation of the project through BRBCL were provided by the Central Government in terms of the Union Budget proposed in the year 2005-06. The High Court then concluded that criminal conspiracy for committing the offence was thus hatched at Delhi and for all these reasons, the CBI was competent to register FIR at Delhi and to carry on investigation in that regard. Additionally, the High Court referred to the notification dated 19.2.1996 issued by the State Government of Bihar according consent to all members of the Delhi Special Police Establishment (for short, "the DSPE") to exercise powers and jurisdiction under the 1946 Act in the whole of the State of Bihar in respect of the stated offences. The said notification reads thus: -

"NO.3/Vividh-6019/96
Government of Bihar
Home (Police) Department
Notification

Patna the

February, 1996

O.O. No. _____/- In exercise of the powers conferred by section 6 of the Delhi Special Police Establishment Act, 1945 (Act XXV of 1945), and in supersession of all previous notifications on the subject the Governor of Bihar is pleased to accord his consent to all members of the Delhi Special Police Establishment to exercise powers and jurisdiction under the said Act in whole of the State of Bihar in respect of the investigation of the followings:-

(a) Offences committed in connection with the affairs of the Govt. of India, Local authority subject to the control of the Government of India or any corporation, company or Bank owned or controlled by the Govt. of India.

(i) punishable under the prevention of corruption Act, 1947 (Act 2 of 1947);

(ii) punishable under Section 403, 406, 407, 408, 409, 411, 412, 413, 414, 417, 418, 419, 420, 465, 466, 467, 468, 471 and 477-A of the Indian Penal Code (45 of 1860); and

(iii) attempts, abetments and conspiracies in relation to, or in connection with the offences mentioned in clause (i) and (ii) above any other offence committed in the course of the same transaction arising out of the same facts.

(b) offences punishable under the Central Acts specified in the Annexure appended hereto,

Provided that where public servants employed in connection with the affairs of the Government of Bihar and persons employed in connection with the affairs of any local authority subject to the control of the Government of Bihar or any corporation, company or Bank owned or controlled by the Government of Bihar or any institution receiving or having received any financial aid from the Government of Bihar are concerned in offences referred to in items a(i) to (iii) and (b) above, the prior consent of the State Government shall be obtained for the investigation of any such offence by the Delhi Special Police Establishment.

File No.1/Vividh-6019/96)

Bihar

By order of Governor of

Sd/---
(D.P. Maheshwari)

Commissioner & Secretary
Home Department”

The High Court negated the argument of the appellant that the proviso in the said notification restricted the general consent accorded by the State. It was urged by the appellant that the purport of the proviso was to make it amply clear that no consent was given by the State Government in terms of Section 6 of the 1946 Act to authorise the members of the DSPE to exercise powers and jurisdiction under the 1946 Act in respect of offences in which public servants employed in connection with the affairs of the Government of Bihar were allegedly involved. Investigation in respect of such cases could be undertaken only after taking prior consent of the State Government of Bihar and not otherwise.

7. The High Court noted that it was not the case of the appellant that the offences referred to in the subject FIR were not covered by the notification issued by the Central Government in terms of Section 3 of the 1946 Act. The High Court held that the investigation in the present case had begun in respect of affairs of an agent of a public sector undertaking and the Central Government through Ministry of Railways with regard to

siphoning of funds by the agent entering into a criminal conspiracy with some persons who incidentally reside outside the Union Territory. Investigation *qua* them could be proceeded by the CBI without the consent of the concerned State Government where the co-accused resided. The High Court in paragraphs 46 and 48 noted thus: -

“46. Once the offences or the classes of offences are covered under the notification issued by the Central Government in terms of Section 3 and the offences alleged are said to be in respect of the funds of the government being siphoned through its agent which is a corporate body and a government company through its Chief Executive Officer and the registered office of the said corporate body is in the Union Territory of Delhi, the institution of the FIR as well as the investigation taken up pursuant thereto cannot be stopped and no consent of the government of Bihar would be required to investigate the persons involved in commission of the offence. Such person may be an officer working in connection with the affairs of the State of Bihar, but where the offences alleged are in connection with the funds of the Government of India through its agent a government company having its registered office at Union Territory of Delhi, it would be immaterial that any other person involved in commission of the said offence is working in connection with the affairs of the State Government. In the facts of the present case, this Court is of the considered opinion that no consent of the State Government in terms of Section 6 of the DSPE Act, 1946 would be required.

xxx

xxx

xxx

48. Even though learned Senior counsel representing the petitioner submits that in the present case the B.R.B.C.L. cannot be said to be a company owned or controlled by the Central Government, this Court is of the considered opinion that first part of the notification dated 19.02.1996 in so far as it states that the consent of the government is in respect of the investigation of the offence

committed in connection with the affairs of the Government of India, local authority subject to the control of the Government of India, local authority subject to the control of the Government of India or any Corporation, Company or Bank owned and controlled by the Government of India cannot be given a narrow meaning.”

While dealing with the proviso in the subject notification dated 19.2.1996, the High Court in paragraphs 57 and 58 observed thus:-

“57. The proviso to the notification dated 19.02.1996 issued by the Government of Bihar cannot come to the rescue of the petitioner in the present set of facts and circumstances where the C.B.I. while investigating a case involving a government company who is acting as an agent of the public sector undertaking and Ministry of Railways finds that some more persons including those who are public servants presently working and serving under the Government of Bihar are also involved in the conspiracy which has an ultimate effect of causing unlawful loss to the principal for which the agent is working, no individual consent would be required in terms of Section 6 of the D.S.P.E. Act.

58. The contention of the learned Senior Counsel based on the proviso part of the notification dated 19.02.1996 could have been worth consideration if it could have been shown to this Court that the entire alleged offence in respect of which the C.B.I. has assumed jurisdiction to investigate relate to an affairs of the State of Bihar. This Court would, therefore, reiterate that in the facts situation of the present case no consent at all would be required from the Government of Bihar.”

The High Court accordingly rejected the challenge put forth by the appellant and dismissed the writ petition being devoid of merit.

8. The appellant has reiterated the grounds urged before the High Court and would contend that CBI could not have registered the FIR much less investigated the same without prior consent of the State of Bihar in that regard. The notification dated 19.2.1996 does not authorise the CBI to register cases against the public servants employed in connection with the affairs of the Government of Bihar. In support of this submission, reliance has been placed on the decisions in ***State of West Bengal & Ors. vs. Committee for Protection of Democratic Rights, West Bengal & Ors.***¹, ***Ms. Mayawati vs. Union of India & Ors.***² and ***M. Balakrishna Reddy vs. Director, Central Bureau of Investigation, New Delhi***³. It is urged that the interpretation by the High Court regarding the purport of the subject notification dated 19.2.1996 is flawed; and, is in teeth of the express stipulation in the proviso thereof. It is urged that any other view would result in impacting the federal structure of the country, which is the basic feature of the Constitution of India. Further, the general consent accorded by the State of Bihar vide stated notification is a conditional one for exercise of powers and

1 (2010) 3 SCC 571

2 (2012) 8 SCC 106

3 (2008) 4 SCC 409

jurisdiction by the officials of the DSPE. The appellant has drawn our attention to the expression “may” used in Sections 3 and 5 of the 1946 Act in contradistinction to the expression “shall” in Section 6 and would urge that the requirement of prior unambiguous consent of the State Government is the prerequisite and *sine qua non* to empower the officials of the DSPE. The appellant has also pointed out that the nature of allegation in the FIR against the appellant disregards the factual background in which the declaration in favour of Gopal Prasad Singh regarding the land bearing Khata No. 12, Plot number 1 of Mauja Kajrain was issued after due evaluation of his claim in the hierarchy of administrative set up right from Anchal Amin upto Additional District Magistrate, which process went on from 1971 as is manifest from the official record. It is thus urged that the alleged act of the appellant was done in official capacity and was protected by Section 79 of the IPC. The CBI ought to have undertaken preliminary enquiry before rushing to register the FIR on the basis of source information. Even for that reason, the action of CBI cannot be countenanced - not being in conformity with the CBI Manual. It is urged that the FIR does not disclose any offence *qua* the appellant and that it was registered without

offering any explanation for the inordinate delay. Finally, it is urged that the registration of FIR itself was barred by Section 6 of the 1946 Act read with notification dated 19.2.1996.

9. The State of Bihar has supported the claim of the appellant on the question of law by contending that Policing is a State subject under Entry 2 List II of Schedule VII of the Constitution. Hence, having due regard to the federal structure recognised under the Constitution, provision such as Section 6 of the 1946 Act has been incorporated. According to the State, combined reading of Sections 2, 3, 5 and 6 of the 1946 Act would show that DSPE has jurisdiction to investigate offences notified under Section 3 in any Union Territory; the use of the expression “may” in Sections 3 and 5 is indicative that it is only an enabling provision, enabling the Central Government to extend the area of operation of DSPE to any area in the State by an order. The order under Section 5, however, is made subject to the condition predicated in Section 6, namely, it would come into effect only after consent of the concerned State Government is accorded. For, Section 6 uses the expression “shall”, which is suggestive of the fact that the said requirement is mandatory in nature and

without such prior consent of the State, DSPE would not get jurisdiction to enter upon investigation of the specified offences and exercise its powers and jurisdiction in any area of a State. As regards the notification dated 19.2.1996, it is urged by the State that it is a general consent, making it amply clear that prior consent to investigate cases against the public servants employed in connection with the affairs of the Government of Bihar is essential. That requirement has not been dispensed with in terms of the proviso in the subject notification. It is always open to the State to accord partial consent on the terms specified in the notification. As the State is variously concerned about the actions of its employees including the subject of Policing being a State subject, it is urged that the DSPE ought to have intimated the State about the acts of commission and omission of the officers of the State, so that the State could have examined the same and resorted to appropriate action as per law. The State is also relying on the exposition in ***Committee for Protection of Democratic Rights, West Bengal*** (supra). It is urged by the State that no consent has been obtained by the DSPE in terms of the proviso, although the allegations in the FIR registered by

them against the appellant who is a State Government employee are in connection with the affairs of the State.

10. The learned Additional Solicitor General appearing for the CBI has adopted the reasons noted by the High Court. He has urged that the occupation/residence of one of the accused cannot come in the way of DSPE to carry on the investigation in respect of offence of conspiracy to defraud the Government of India undertaking whose registered office is at Delhi and more so because the siphoning of funds of the undertaking has been committed within the territory of Delhi. The investigation of such a case cannot be regarded as in respect of an offence independently committed by the public servant employed in connection with the affairs of the Government of Bihar as such. As a result, no consent of any State to investigate such an office would be necessary. As a matter of fact, no State would have jurisdiction to enquire into or investigate the offence committed in relation to the Government of India undertaking registered in the territory of Delhi. Similarly, only the Courts in Delhi would have jurisdiction to take cognizance of the stated offence. In such a situation, the occupation or status of the accused or his

residence cannot be the basis to constrict the powers of the investigating agency (DSPE) in any manner. It is urged that if the argument of the appellant is accepted, that would have serious implications. For, in cases where the DSPE during the course of investigation of specified crimes committed in Union Territory is confronted with the accused employed/residing in different States, it would require the DSPE to obtain consent of every such State wherever the accused resides and is an employee of that State. That cannot be the intention of law in empowering the special police establishment (DSPE) to investigate specified and notified offences committed within the Union Territory. The harmonious and purposive construction of the provisions of the 1946 Act, in particular Section 5 thereof, would be to confine the consent of the State Government under Section 6 in respect of investigation of crime exclusively committed within the jurisdiction of that State. In other words, no consent would be required in respect of specified offence(s) committed within the Union Territory, which could be investigated only by the DSPE under Sections 2 and 3 of the 1946 Act throughout India. Any other interpretation would render the dispensation regarding investigation of specified offences committed within the Union

Territory otiose. This is moreso because the State would have no jurisdiction to investigate such offence committed within the jurisdiction of the Union Territory. Resultantly, the question of obtaining consent of the State merely because one of the accused involved in the offence happens to be residing in that State or is a public servant of that State, is not contemplated by law. It is also urged that the proviso to the subject notification dated 19.2.1996 has the effect of defeating the purpose for which special legislation has been enacted and dispensation thereunder for investigation of specified offences is established.

11. Relying on the exposition of the Constitution Bench in ***Subramanian Swamy vs. Director, Central Bureau of Investigation & Anr.***⁴, it is urged that the principle underlying the declaration of provisions such as Section 6A of the 1946 Act being *ultra vires*, must apply to the proviso which is part of notification being an executive instruction classifying offenders differently for treatment thereunder, including investigation of offences and prosecution for offences, according to their status in life on account of being employed in connection with the affairs of the Government of Bihar. That is impermissible and cannot be

4 (2014) 8 SCC 682

countenanced as it defeats the purpose of finding *prima facie* truth into the allegations of the specified crime, as every person accused of committing the same offence is to be dealt with in the same manner in accordance with law, which is equal in its application to everyone. The alleged acts of commission and omission of the appellant in the State of Bihar would not alter the substratum of the offence or crime in question stated to have been committed to defraud the Government undertaking (BRBCL) and resultantly siphoning of its funds within the Union Territory of Delhi (National Capital Territory of Delhi).

12. Our attention is also invited by the learned Additional Solicitor General to a recent decision of the Delhi High Court in ***Anand Agarwal vs. Union of India & Ors.***⁵, which has upheld the stand taken by the CBI that requirement of consent of the State is premised on the basis that the specified offence or offences committed and under investigation, have taken place in the State (outside the Union Territory). The Delhi High Court has agreed with the view taken by the High Court of Judicature at Patna in the impugned judgment. It is urged that the appeal be dismissed being devoid of merit.

5 (2018) SCC Online Del 11713

13. After cogitating over the rival submissions, the core issue which arises for consideration in the present case is: whether the proviso in the stated notification dated 19.2.1996 would come in the way of the officials of DSPE to register FIR and carry on investigation of specified offences committed within the Union Territory (National Capital Territory of Delhi), to which the 1946 Act applies?

14. The 1946 Act has been enacted to make provision for constitution of a special police force in Delhi for the investigation of certain offences (committed) in the Union Territories, for the superintendence and administration of the said force and for the extension to other areas of the powers and jurisdiction of the members in regard to the investigation of the said offences. This Act applies to the whole of India. Section 2 of the 1946 Act enables the Central Government to constitute a special force to be called DSPE for the investigation in any Union Territory of specified offences notified under Section 3. Section 3 of the 1946 Act enables the Central Government, by notification in the official gazette to specify the offences or classes of offences which are to be investigated by the DSPE. It is not in dispute that the offences

referred to in the subject FIR are so specified by the notification issued under Section 3.

15. The consequence of establishing a special police force under Section 2 is to empower the members of the said police force to exercise all the powers, duties, privileges and liabilities throughout the Union Territory in relation to the investigation of specified offences, which police officers of that Union Territory have in connection with the investigation of offences committed therein. By virtue of sub-Section (3) of Section 2 of the 1946 Act, any member of the said 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 powers 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, 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. Resultantly, specified offences committed within the Union Territories are required to be investigated exclusively by the special police force constituted for that purpose.

16. The purport of Section 5 of the 1946 Act is to enable the Central Government to extend the powers and jurisdiction of members of the DSPE for the investigation of any offence or class of offences specified in the notification under Section 3, in a State not being a Union Territory. Such extension of powers and jurisdiction of members of the special police force becomes necessary in respect of specified offences “committed outside the jurisdiction of the Union Territory” referred to in Sections 2 and 3 of the 1946 Act. However, in keeping with the federal structure of the Constitution which is fundamental to the Constitution, consent of such a State has been made essential, as predicated in Section 6 of the 1946 Act. Sections 5 and 6 of the 1946 Act read thus: -

“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 Railway areas), in 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 of 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 incharge 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.”

Such a consent may not be necessary regarding the investigation by the special police force (DSPE) in respect of specified offences committed within Union Territory and other offences associated therewith. That may be so, even if one of the accused involved in the given case may be residing or employed in some other State (outside the Union Territory) including in connection with the affairs of the State/local body/corporation, company or bank of the State or controlled by the State/institution receiving or having received financial aid from State Government, as the case may be. Taking any other view would require the special police force to comply with the formality of taking consent for

investigation even in relation to specified offence committed within Union Territory, from the concerned State merely because of the fortuitous situation that part of the associated offence is committed in other State and the accused involved in the offence is residing in or employed in connection with the affairs of that State. Such interpretation would result in an absurd situation especially when the 1946 Act extends to the whole of India and the special police force has been constituted with a special purpose for investigation of specified offences committed within the Union Territory, in terms of notification issued under Section 3 of the 1946 Act.

17. This Court in **M. Balakrishna Reddy** (supra) expounded the purport of Sections 3, 5 and 6 of the 1946 Act and observed in paragraph 19 as under: -

“**19.** Plain reading of the above provisions goes to show that for exercise of jurisdiction by CBI in a State (other than Union Territory or Railway area), consent of the State Government is necessary. In other words, before the provisions of the Delhi Act are invoked to exercise power and jurisdiction by Special Police Establishment in any State, the following conditions must be fulfilled:

(i) A notification must be issued by the Central Government specifying the offences to be investigated by Delhi Special Police Establishment (Section 3);

(ii) An order must be passed by the Central Government extending the powers and jurisdiction

of Delhi Special Police Establishment to any State in respect of the offences specified under Section 3 (Section 5); and

(iii) Consent of the State Government must be obtained for the exercise of powers by Delhi Special Police Establishment in the State (Section 6).”

This judgment dealt with a case where offence was committed in the State of Madhya Pradesh in the year 1996, which had already accorded consent under Section 6, but the accused at the time when the case was registered, was working in a different State i.e. the State of Uttar Pradesh. The challenge in that case was to the order which according to the appellant therein, did not fulfil the elements of Section 6 of the 1946 Act. That challenge came to be negated by this Court in paragraphs 69 and 71 of the reported judgment, in the following words: -

“69. In the present case, the decision produced by the respondent along with the counter-affidavit filed by the Superintendent of Police, CBI, Bhopal clearly sets out all the particulars required by Section 6 of the Delhi Act. It refers to the file/reference number, name of the department, the authority from whom it was issued and communicated to the department concerned of the Central Government. It, therefore, cannot be said that the State Government had not granted consent under Section 6 of the Delhi Act.

xxx

xxx

xxx

71. A closer scrutiny of the relevant provisions of the Delhi Act also add credence to the view which we are inclined to take. Section 3 refers to “notification” and requires the Central Government to issue notification specifying offences or class of offences to be investigated by Special Police Establishment. Section 5 uses the term “order” and enables the Central Government to extend

powers and jurisdiction of Special Police Establishment to other areas not covered by the Act. Section 6 which speaks of consent of the State Government for the exercise of powers and jurisdiction of the Special Establishment neither refers to “*notification*” nor “*order*”. It merely requires consent of the State Government for the application of the Delhi Act. Parliament, in our considered opinion, advisedly and deliberately did not specify the mode, method or manner for granting consent though in two preceding sections such mode was provided. If it intended that such consent should be in a particular form, it would certainly have provided the form as it was aware of different forms of exercise of power. It, therefore, depends on the facts of each case whether the consent required by Section 6 of the Delhi Act has or has not been given by the State Government and no rule of universal application can be laid down.”

18. The High Court, in the present case, after analysing the material on record clearly found that BRBCL was a Government undertaking and the project undertaken by it was funded by the Central Government and that it had its registered office in the Union Territory of Delhi (National Capital Territory of Delhi), where the offence of defrauding the undertaking (BRBCL) and siphoning of its funds was allegedly committed. We see no reason to deviate from the opinion so recorded by the High Court.

19. The appellant, however, would rely on the allegations in the subject FIR to contend that the role of the appellant at best is in respect of certain official duty in connection with the affairs of the Government of Bihar. This submission overlooks the substratum of the allegations in the FIR, as registered by the CBI against the

CEO of BRBCL – Shri C. Sivakumar and the appellant being co-accused (party to the conspiracy) regarding defrauding the Government of India undertaking (BRBCL) having its registered office at Delhi (Union Territory) and siphoning of its funds. The alleged role played by the appellant may be a means to facilitate the commission of crime of defrauding and siphoning of funds. The FIR in that sense is not limited to an offence of manipulation of official records of the State of Bihar as such, but is about the means used by the different actors who were party to the conspiracy in defrauding the Government of India undertaking (BRBCL) and siphoning of its funds.

20. Indisputably, the registered office of BRBCL is within the jurisdiction of Union Territory of Delhi (National Capital Territory of Delhi) and allegedly the offence has been committed at Delhi, for which reason the Delhi Court will have jurisdiction to take cognizance thereof. To put it differently, the offence in question has been committed outside the State of Bihar. The investigation of the stated offence may incidentally transcend to the territory of State of Bihar because of the acts of commission and omission of the appellant who is resident of that State and employed in

connection with the affairs of the State of Bihar. That, however, cannot come in the way of special police force (DSPE) from investigating the offence committed at Delhi and has been so registered by it and is being investigated. Had it been an offence limited to manipulation of official record of the State and involvement of officials of the State of Bihar, it would have been a different matter. It is not the case of the appellant or the State of Bihar that even an offence accomplished at Delhi of defrauding of the Government of India undertaking (having registered office at Delhi) and siphoning of the funds thereof at Delhi can be investigated by the State of Bihar. If the State police has had no jurisdiction to investigate the offence in question, as registered, then, seeking consent of the State in respect of such offence does not arise. Any other approach would render the special provisions of the 1946 Act otiose.

21. In any case, the respondent-State having granted general consent in terms of Section 6 of the 1946 Act vide notification dated 19.2.1996, it is not open to it to argue to the contrary. The respondent-State cannot be allowed to approbate and reprobate.

22. Indeed, the said notification contains a proviso, which predicates that if any public servant employed in connection with the affairs of the Government of Bihar is concerned in offences being investigated by the special police force pursuant to the notification, prior consent of the State Government *qua* him shall be obtained. This proviso must operate limited to cases or offences which have been committed within the territory of the State of Bihar. If the specified offence is committed outside the State of Bihar, as in this case in Delhi, the State police will have no jurisdiction to investigate such offence and for which reason seeking consent of the State to investigate the same would not arise. In our opinion, the stated proviso will have no application to the offence in question and thus the Delhi special police force/DSPE (CBI) must be held to be competent to register the FIR at Delhi and also to investigate the same without the consent of the State.

23. Even otherwise, the proviso has the effect of differentiating and classifying offenders differently for treatment thereunder, including investigation of offences and prosecution for offences on the basis of being public servant employed in connection with

the affairs of the Government of Bihar. The power bestowed on special police force in terms of Sections 2 and 3 of the 1946 Act cannot be undermined by an executive instruction in the form of proviso. Dealing with a similar challenge to a statutory provision - Section 6A of the Act, the Constitution Bench of this Court in **Subramanian Swamy** (supra) held that sub-Section (1) thereof was invalid and violative of Article 14 of the Constitution. In paragraphs 61 and 68 of the said decision, the Court noted thus:-

“61. The essence of police investigation is skillful inquiry and collection of material and evidence in a manner by which the potential culpable individuals are not forewarned. The previous approval from the Government necessarily required under Section 6-A would result in indirectly putting to notice the officers to be investigated before the commencement of investigation. Moreover, if CBI is not even allowed to verify complaints by preliminary enquiry, how can the case move forward? A preliminary enquiry is intended to ascertain whether a prima facie case for investigation is made out or not. If CBI is prevented from holding a preliminary enquiry, at the very threshold, a fetter is put to enable CBI to gather relevant material. As a matter of fact, CBI is not able to collect the material even to move the Government for the purpose of obtaining previous approval from the Central Government.

xxx

xxx

xxx

68. Can it be said that the classification is based on intelligible differentia when one set of bureaucrats of Joint Secretary level and above who are working with the Central Government are offered protection under Section 6-A while the same level of officers who are working in the States do not get protection though both classes of these officers are accused of an offence under the PC Act, 1988 and inquiry/investigation into such allegations is to be carried out. Our answer is in the negative. **The provision in Section 6-A, thus, impedes tracking down the corrupt senior bureaucrats as without previous approval of the Central Government, CBI cannot even**

hold preliminary inquiry much less an investigation into the allegations. The protection in Section 6-A has propensity of shielding the corrupt. The object of Section 6-A, that senior public servants of the level of Joint Secretary and above who take policy decision must not be put to any harassment, sidetracks the fundamental objective of the PC Act, 1988 to deal with corruption and act against senior public servants. CBI is not able to proceed even to collect the material to unearth prima facie substance into the merits of allegations. Thus, the object of Section 6-A itself is discriminatory. **That being the position, the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved.**"

(emphasis supplied)

The thrust of this exposition is that every person committing the same offence is to be dealt with in the same manner in accordance with law, which is equal in its application to everyone. The discrimination or differentiation must be founded on pertinent and real differences as distinguished from irrelevant and artificial ones. In paragraph 70, the Court went on to observe 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.

24. Suffice it to observe that the proviso contained in the stated notification dated 19.2.1996 cannot be the basis to disempower the special police force/DSPE (CBI) from registering the offence committed at Delhi to defraud the Government of India

undertaking (BRBCL) and siphoning of its funds and having its registered office at Delhi. Allegedly, the stated offence has been committed at Delhi. If so, the Delhi Courts will have jurisdiction to take cognizance thereof. The State police (State of Bihar) cannot investigate the specified offences committed and accomplished at Delhi, being outside the territory of the State of Bihar. It must follow that the consent of the State of Bihar to investigate such offence is not required in law and for which reason, the special police force would be competent to carry on the investigation thereof even if one of the accused allegedly involved in the commission of stated offence happens to be resident of the State of Bihar or employed in connection with the affairs of the Government of Bihar and allegedly committed associated offences in that capacity. In other words, consent of the State under Section 6 cannot come in the way or constrict the jurisdiction of the special police force constituted under Section 2 to investigate specified offences under Section 3 of the 1946 Act committed within the Union Territories. Indeed, when the Court of competent jurisdiction proceeds to take cognizance of offence and particularly against the appellant, it may consider the question of necessity of a prior sanction of the State of Bihar *qua*

its official(s) as may be required by law. That question can be considered on its own merits in accordance with law.

25. For the view that we have taken, it may not be necessary for us to analyse the decisions relied upon by the parties, which in our opinion, do not pertain to the question under consideration regarding the effect of the proviso contained in the notification dated 19.2.1996.

26. In view of the above, this appeal must fail and the same is accordingly dismissed. Pending interlocutory applications, if any, shall also stand disposed of.

.....J.
(A.M. Khanwilkar)

.....J.
(Dinesh Maheshwari)

New Delhi;
April 24, 2020.