SUPREME COURT OF INDIA

Subramanian Swamy

Vs.

Director, CBI & Ors

W.P.(Civil.) No. 38 of 1997

(Y.K. Sabharwal, D.M. Dharmadhikari and Tarun Chatterjee, JJ.)

04.02.2005

JUDGEMENT

Y.K. Sabharwal, J.

1. In these petitions challengeis to the constitutional validity of Section 6-A of the Delhi Special Police Establishment Act, 1946 (for short "the Act"). This section was inserted in the Act w.e.f. 12-9-2003. It, inter alia, provides for obtaining the previous approval of the Central Government for conduct of any inquiry or investigation for any offence alleged to have been committed under the Prevention of Corruption Act, 1988 where allegations relate to officers of the level of Joint Secretary and above. Before insertion of Section 6-A in the Act, the requirement to obtain prior approval of the Central Government was contained in a directive known as "Single Directive" issued by the Government. The Single Directive was a consolidated set of instructions issued to the Central Bureau of Investigation (CBI) by various Ministries/Departments regarding modalities of initiating an inquiry or registering a case against certain categories of civil servants. The said directive was stated to have been issued to protect decision-making-level officers from the threat and ignominy of malicious and vexatious inquiries/investigations and to give protection to officers at the decision-making level and to relieve them of the anxiety from the likelihood of harassment for taking honest decisions. It was said that absence of such protection to them could adversely affect the efficiency and efficacy of these institutions because of the tendency of such officers to avoid taking any decisions which could later lead to harassment by any malicious and vexatious inquiries/investigations.

2. The Single Directive was quashed by this Court in a judgment delivered on 18-12-1997 (Vineet Narain v. Union of India). Within a few months after Vineet Narain1 judgment, by the Central Vigilance Commission Ordinance, 1998 dated 25-8-1998, Section 6-A was sought to be inserted providing for the previous approval of the Central Vigilance Commission before investigation of the officers of the level of Joint Secretary and above. On the intervention of this Court, this provision was deleted by issue of another Ordinance promulgated on 27-10-1998. From the date of the decision in Vineet Narain casex and till

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insertion of Section 6-A w.e.f. 12-9-2003, there was no requirement of seeking previous approval except for a period of two months from 25-8-1998 to 27-10-1998.

3. The validity of Section 6-A has been questioned on the touchstone of Article 14 of the Constitution. Learned amicus curiae has contended that the impugned provision is wholly subversive of independent investigation of culpable bureaucrats and strikes at the core of rule of law as explained in Vineet Narain case1 and the principle of independent, unhampered, unbiased and efficient investigation. The contention is that Vineet Narain1 decision frames a structure by which honest officers could fearlessly enforce the criminal law and detect corruption uninfluenced by extraneous political, bureaucratic or other influences and the result of the impugned legislation is that the very group of persons, namely, high-ranking bureaucrats whose misdeeds and illegalities may have to be inquired into, would decide whether CBI should even start an inquiry or investigation against them or not. There will be no confidentiality and insulation of the investigating agency from political and bureaucratic control and influence because the approval is to be taken from the Central Government which would involve leaks and disclosures at every stage. The very nexus of the criminal-bureaucrat- politician which is subverting the whole polity would be involved in granting a or refusing prior approval before an inquiry or investigation can take place. Pointing out that the essence of a police investigation is skilful inquiry and collection of material and evidence in a manner by which the potential culpable individuals are not forewarned, the submission made is that the prior sanction of the same department would result in indirectly putting to notice the officers to be investigated before commencement of investigation, b Learned Senior Counsel contends that it is wholly irrational and arbitrary to protect highly-placed public servants from inquiry or investigation in the light of the conditions prevailing in the country and the corruption at high places as reflected in several judgments of this Court including that of Vineet Narain1. Section 6-A of the Act is wholly arbitrary and unreasonable and is liable to be struck down being violative of Article 14 of the Constitution is c the submission of learned amicus curiae.

4. In support of the challenge to the constitutional validity of the impugned provision, besides observations made in the three-Judge Bench decision in Vineet Narain case1 reliance has also been placed on various decisions including *S.G. Jaisinghani v. Union of India , Shrilekha Vidyarthi ^ v. State of U.Pf, Ajay Hasia v. Khalid Mujib Sehravardi and Mardia Chemicals Ltd. v. Union of India* to emphasise that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In Mardia Chemicals case5 a three-Judge Bench held Section 17(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to be e unreasonable and arbitrary and violative of Article 14 of the Constitution. Section 17(2) provides for condition of deposit of 75% of the amount before an appeal could be entertained. The condition has been held to be illusory and oppressive. Malpe Vishwanath Acharya v. State of Maharashtra , again a decision of a three-Judge Bench, setting aside the decision of the High Court which upheld the provisions of Sections 5(10)(b), 11(1) and 12(3) of the f Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 pertaining to standard rent in petitions where the constitutional validity of those provisions was challenged on the ground of the same being

arbitrary, unreasonable and consequently ultra vires Article 14 of the Constitution, has come to the conclusion that the said provisions are arbitrary and unreasonable. 9

5. Learned Solicitor General, on the other hand, though very fairly admitting that the nexus between criminals and some elements of establishment including politicians and various sections of bureaucracy has increased and also that there is a disturbing increase in the level of corruption and these problems need to be addressed, infractions of the law need to be investigated, investigations have to be conducted quickly and effectively without any interference and the investigative agencies should be allowed to function without any interference of any kind whatsoever and that they have to be insulated from any extraneous influences of any kind, contends that a legislation cannot be struck down on the ground of arbitrariness or unreasonableness as such a ground is available only to quash executive action and orders. Further contention is that even a delegated legislation cannot be quashed on the ground of mere arbitrariness and even for quashing such a legislation, manifest arbitrariness is the requirement of law. In support, reliance has been placed on observations made in a three-Judge Bench decision *in State of A. P. v. McDowell & Co.*[1] that no enactment can be struck down by just saying that it is arbitrary or unreasonable and observations made in *Khoday Distilleries Ltd. v. State of Karnataka*[2] that delegated legislation can be struck down only if there is manifest arbitrariness. nnvuratr, onin-m*

6. In short, the moot question is whether arbitrariness and unreasonableness or manifest arbitrariness and unreasonableness, being facets of Article 14 of the Constitution are available or not as grounds to invalidate a legislation. Both counsel have placed reliance on observations made in decisions rendered by a Bench of three learned Judges.

7. Further contention of learned Solicitor General is that the conclusion drawn in Vineet Narain case1 is erroneous that the Constitution Bench decision in *K. Veeraswami v. Union of India*[3] is not an authority for the proposition that in the case of high officials, requirement of prior permission/sanction from a higher officer or Head of the Department is permissible, the submission is that conclusion reached in para 34 of Vineet Narain' decision runs contrary to observations and findings contained in para

28 of Veeraswami case9

8. Having regard to the aforesaid, we are of the view that the-matters deserve to be heard by a larger Bench, subject to the orders of Hon ble the Chief Justice of India.

[1] (1991) 1 SCC 212 [3] (1996) 3 SCC 709
[2]1991 SCC (L&S) 742

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