

S U P R E M E C O U R T O F I N D I A

Writ Petition (C) No.38 of 1997

DR. SUBRAMANIAN SWAMY  
Petitioner (s)

VERSUS

DIRECTOR, C.B.I. & ORS.  
Respondent (s)

Resp

With W.P.(C) No.21/2004

[Heard by Hon'ble Y.K. Sabharwal, Hon'ble D.M. Dharmadhikari and  
Hon'ble Tarun Chatterjee, JJ.]

Date : 04/02/2005 These petitions were called on for pronouncement of  
judgement today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Petitioner (s)

Mr. Anil B. Divan, Sr.Adv. (A.C.)

Mr. A.K. Panda, Sr.Adv. (A.C.)

Ms. Kamini Jaiswal, Adv.

Mr. Prashant Bhushan, Adv.

Attorney General for India (NP)

For Respondent (s)

Mr. Devdatt Kamat, Adv.

Mr. P.Parmeswaran, Adv.

RECORD OF PROCEEDINGS

Hon'ble Mr. Justice Y.K.Sabharwal pronounced the order  
of the Bench

comprising Mr. Justice Y.K.Sabharwal, Hon'ble Mr. Justice D.M. Dharmadhikari  
and Mr. Justice Tarun Chatterjee.

(N. Annapurna)  
Court Master

(V.P. Tyagi)  
Court Master

[Signed order is placed on the file]

Not Reportable.

IN THE SUPREME COURT OF INDIA

CIVIL WRIT JURISDICTION

WRIT PETITION (C) NO.38 OF 1997

Dr.Subramanian Swamy

... Petitioner (s)

Versus

Director, CBI & Ors.

... Respondent (s)

[With W.P. (C) No.21 of 2004]

O R D E R

Y.K. Sabharwal, J.

In these petitions challenge is 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. 12th September, 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 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.

The Single Directive was quashed by this Court in a judgment delivered on

18th December, 1997 [Vineet Narain & Ors. v. Union of India & Anr. (1998) 1 SCC 226].

Within a few months after Vineet Narain's judgment, by Central Vigilance Commission

Ordinance, 1998 dated 25th August, 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 27th October, 1998. From the date of the decision in Vineet Narain's

case and till insertion of Section 6-A w.e.f. 12th September, 2003, there was no

requirement of seeking previous approval except for a period of two months from

25th August to 27th October, 1998.

The validity of Section 6-A has been questioned on the touchstone of Article

14 of the Constitution of India. 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's case

and principle of independent, unhampered, unbiased and efficient investigation.

The contention is that Vineet Narain's decision frames 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 the 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 or refusing prior approval be

fore 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 same department would result in indirectly putting

to notice the officers to be investigated before commencement of investigation.

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 Narain's. 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 of India is the submission of learned

Amicus Curiae.

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's case, reliance has also been placed on various decisions including S.G.

Jaisinghani v. Union of India & Ors. [(1967) 2 SCR 703], Kumari Shrilekha Vidyarthi & Ors. v.

State of U.P. & Ors. [(1991) 1 SCC 212], Ajay Hasia and Others. v. Khalid Mujib Sehravardi and

Others. [(1981) 1 SCC 722] and Mardia Chemicals Ltd. and Others. v. Union of India and Others.

[(2004) 4 SCC 311] to emphasize 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' case 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 unreasonable and arbitrary and violative of Article 14 of the Constitution of India.

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 & Ors. v. State of Maharashtra & Anr. [(1998) 2 SCC

1], 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

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 of Article 14 of the Constitution, has come to the conclusion

that the said provisions are arbitrary and unreasonable.

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 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. & Ors. v. McDowell & Co. & Ors. [(1996) 3 SCC 709] that no enactment can be struck

down by just saying that it is arbitrary or unreasonable and observations made in

Khoday Distilleries Ltd. and Others. v. State of Karnataka and Others [1996(10) SCC 304] that

delegated legislation can be struck down only if there is manifest arbitrariness.

In short, the moot question is whether arbitrariness and unreasonableness or

manifest arbitrariness and unreasonableness, being facets of Article 14 of the

Constitution of India are available or not as grounds to invalidate a legislation. Both

counsel have placed reliance on observations made in decisions rendered by Bench

of three learned Judges.

Further contention of learned Solicitor General is that the conclusion drawn in

Vineet Narain's case is erroneous that the Constitution Bench decision in K. Veeraswami

v. Union of India & Ors. [(1991) 3 SCC 655] 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's decision run contrary to observations and

findings contained in para 28 of Veeraswami's case.

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.

.....,J.

[Y.K. Sabharwal]

.....,J.

.....  
[D.M. Dharmadhikari]

.....,J.

.....  
[Tarun Chatterjee]

New Delhi

February 4, 2005.