



GAHC010274892023

Page No.# 1/18



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1286/2023

TAKAM SORANG
S/O LATE SORANG TAKIO
R/O VILL- DAMSITE, NAHARLAGUN
P.O.NAHARLAGUN
P.S. NAHARLAGUN
DIST. PAPUMPARE, ARUNACHAL PRADESH, PIN-791110

VERSUS

CENTRAL BUREAU OF INVESTIGATION (CBI) AND ANR.
GUWAHATI, REPRESENTED BY ITS STANDING COUNSEL.

2:ER. MARKIO TADO
S/O LATE MARKIO TAGI
R/O PAPU NALLAH
WAY TO JULLY VILLAGE

P.O. NAHARLAGUN
DIST. PAPUMPARE
ARUNACHAL PRADESH
PIN-791110

3:THE STATE OF ARUNACHAL PRADESH
REP. BY THE CHIEF SECRETARY
GOVERNMENT OF ARUNACHAL PRADESH
ITANAGAR
PIN-791111

Advocate for the Petitioner : MR. I H LASKAR

Advocate for the Respondent : SC, CBI



**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

JUDGEMENT AND ORDER (CAV)

Date : 04-04-2024

1. Sri Takam Sorang has filed this application under Section 482 of the Code of Criminal Procedure, 1973 (CrPC, for short), with prayer for quashing the impugned criminal proceeding pending in the Court of Special Judicial Magistrate First Class (Magistrate, for short), Kamrup (M), Guwahati, being CR Case No. 1766/2015. It is averred that charges have been framed under Sections 420/468/471 of the Indian Penal Code, 1860 (IPC, for short), against the petitioner, allegedly on the basis of misconstrued notion that the CBI had the consent of the Government of Arunachal Pradesh to carry out the investigation against the petitioner, whereas, no such consent as required under Section 6 of the Delhi Special Police Establishment Act, 1946 (DSPE Act, for short), was ever obtained by the CBI from the State Government in this regard.

2. The Central Bureau of Investigation (CBI, for short), Er. Markio Tado and the State of Arunachal Pradesh, represented by its Chief Secretary, Government of Arunachal Pradesh, are arrayed as respondent Nos. 1, 2 and 3, respectively.

3. The petitioner is a permanent resident of Damsite, Naharlagun, in the district of Papumpare Arunachal Pradesh. On 21.04.2012, the respondent No. 2, the then MLA lodged an FIR contending *inter alia*, that in the year 2009, the petitioner being the proprietor of M/s Rangne Enterprise had procured a loan of Rs. 4.50Crores from the IDBI Bank Limited MSME Department, G.S. Road, Guwahati, on the strength of false and fabricated documents and



accordingly, a case was registered being Case No. RC 6(A)/2013-GWH, under Sections 420/468/471 of the Indian Penal Code, 1860 (IPC, for short). It is alleged that the CBI embarked upon the investigation and finally, submitted charge sheet, without any consent from the Government of Arunachal Pradesh, as mandated under Section 6 of the DSPE Act. The learned Special Judge, CBI, Assam, Guwahati, vide order dated 02.07.2015, transferred the case to the learned Magistrate, for disposal.

4. At the point of consideration of charge, the petitioner had filed a petition being Petition No. 352 under Section 239 CrPC, to be discharged of the offences under which the petitioner was booked. The petition was, however, rejected, by the learned Magistrate, vide order dated 28.02.2019.

5. Against the order dated 28.02.2019, the petitioner preferred a criminal revision petition, being Criminal Revision Petition No. 242/2019, and this Court vide order dated 24.06.2019, passed in the aforementioned criminal revision petition, set aside and quashed the order dated 28.02.2019, passed by the learned Magistrate and remanded back the matter with an observation to re-consider the issue of framing of charge afresh by reflecting all the materials available on record. Thereafter, the petitioner had filed a petition, being Petition No. 3753, under Section 239 of the CrPC, in connection with CR Case No. 1766/2015, before the learned Magistrate, annexing the order of this Court, along with other relevant documents. Against the Petition No. 3753 under Section 239 CrPC, the CBI submitted its objection, wherein the CBI had misled the Court by stating in Para-7(V) that the Government of Arunachal Pradesh has accorded general consent to the CBI long back and the consent was still in existence. However, no documents in support of the misleading statement was



annexed by the CBI to substantiate its stance. The learned Magistrate again vide order dated 06.02.2023, in connection with CR Case No. 1766/2015, rejected the petition with prayer of the petitioner to be discharged of the charges levelled against him. The learned Magistrate relied on the misleading statements of the CBI and passed the aforementioned order and on 26.04.2023, charges under Sections 420/468/471 of the IPC were framed against the petitioner.

6. It is further contended that against the order of rejecting the petition under Section 239 CrPC, the petitioner approached this Court by filing Criminal Revision Petition No. 115/2023, and the CBI again deceptively submitted before this Court that the Government of Arunachal Pradesh had accorded a general consent to the CBI to register a case against the petitioner and this Court vide order dated 20.03.2023, passed in Criminal Revision Petition No. 115/2023, disposed of the petition without interfering into the order dated 06.02.2023, passed by the learned Magistrate in CR Case No. 1766/2015.

7. Thereafter, trial commenced and at present, only one prosecution witness has been examined and the next date was fixed on 13.12.2023, for further evidence.

8. The petitioner was impelled to address his grievance before the Chief Secretary to the Government of Arunachal Pradesh, vide letter dated 08.09.2023, and sought a confirmation about handing over this case to the CBI by the State Government. Pursuant to the said letter, the office of the Under Secretary (Home), Government of Arunachal Pradesh, vide its Letter No. HOME-12047/26/2022 dated 06.11.2023, had clarified that the Government of Arunachal Pradesh had not accorded any consent to the CBI for handing over the instant case to the CBI, in terms of Section 6 of the DSPE Act (Annexure-11).

9. It is further submitted that consequentially, the entire proceeding is not sustainable in the eye of law and is liable to be set aside and quashed.

10. The learned counsel for the petitioner has also projected the *mens rea*, which led to the filing of a false case by the respondent No. 2. It is submitted that a political rivalry is prevalent between both the petitioner and the respondent No. 2. The petitioner was an MLA for 2 terms for the period between 1999-2004 and 2004-2009. However, in the Assembly Elections of 2009, the respondent No. 2 contested along with the petitioner and he won the election by rigging polls. This led the petitioner to file a petition before this Court, registered as Election Petition No. 1 of 2012, challenging the election of respondent No. 2 and this Court vide order dated 12.11.2012, declared the petitioner as duly elected to 20-Tali (ST) Assembly Constituency, in the election held on 13.10.2009. The respondent No. 2 challenged the Judgment and Order of this Court and finally, the Hon'ble Supreme Court vide Judgment and Order dated 10.05.2013, set aside the findings of this Court and allowed the respondent No. 2 to continue as MLA.

11. It is contended that during the pendency of the aforementioned Election Petition No. 1/2012, the instant FIR was lodged by the respondent No. 2 before the CBI, on 21.04.2012, which reflects the malafide of the respondent No. 2, and this is also another ground to set aside the proceeding against the petitioner.

12. It is submitted that the allegation against the petitioner of procuring a loan of Rs. 4.50 Crores from the IDBI Bank Limited, MSME Department, is absolutely false because before sanctioning the loan, the Bank verified all the documents as per terms and conditions of the loan. It is also admitted that the IDBI has acted upon, by filing OA No. 119/2013 in the Debt



Recovery Tribunal, Guwahati and the matter was disposed of vide Judgment and Order dated 09.12.2015 and the IDBI has finally obtained a decree as final settlement and the petitioner has also accepted the decree passed by the learned Tribunal. It is submitted that this Judgment of the learned Tribunal is a testimony that the petitioner has not breached any of the Central Banking Enforceable Laws, while acquiring the aforementioned loan. The petitioner has prayed to quash the impugned proceeding, being CR Case No. 1766/2015, under Sections 420/468/471 of the IPC.

13. Per contra, it is submitted by Mr Haloi, learned Special Public Prosecutor for the CBI that the petitioner, who was a Class-1 Contractor, due to his nefarious activities was dropped from the list of Class-1 Contractor, vide cancellation order dated 13.05.2009. The petitioner had procured a loan and was unable to repay the loan to the IDBI and the petitioner's firm, M/s Rangne Enterprise is at present, a defaulter firm effecting the banking system.

14. A written reply was also submitted by the CBI-respondent No. 1 herein. It is submitted that the petitioner's firm, M/s Rangne Enterprise has fraudulently procured a contract worth Rs. 10 Crores by the PWD, Government of Arunachal Pradesh. The petitioner had procured the loan after submitting two letters to the DGM, IDBI, Guwahati, bearing No. RE/NC/IDBI/08-09-01, dated 19.01.2009 and the letter bearing No. RE/NC/IDBI/08-09-01, dated 21.01.2009, wherein it was mentioned that the equipments would be engaged in construction (formation cutting) of a road measuring 25 kms from Chetan to Pipsorang at Kurung Kumey District, Arunachal Pradesh, under the Border Area Development Project with a project cost of Rs. 18 Crores. Investigation further revealed that the loan application was processed and sanctioned by the IDBI on the basis that equipments would be purchased and

utilized for the construction of a 25 km long road with contract value of Rs. 18 Crores, which was awarded to M/s Rangne Enterprise by PWD, Arunachal Pradesh. The petitioner is the sole owner of the Enterprise. The term loan of Rs. 2 Crores was sanctioned on 07.02.2009. Investigation further revealed that no such work order worth Rs. 18 Crores was awarded to M/s Rangne Enterprise by the PWD and thus, the loan was procured on the basis of the forged letters dated 19.01.2009 and 21.01.2009. Investigation further unearthed that the petitioner again submitted another loan application dated 14.02.2009, for cash credit limit of Rs. 3 Crores as working capital and the petitioner dishonestly and fraudulently placed on record a letter dated 25.02.2009, mentioning therein that M/s Rangne Enterprise has been awarded work order worth Rs. 18 Crores, out of the total work of Rs. 13 Crores pertaining to Yangtei-Tali RIDF Road. The loan application was processed and sanctioned on the basis that the borrower, i.e., M/s Rangne Enterprise was awarded the work order under Yangtei-Tali RIDF Road, for construction of the part of the 25 km length of the Road between Chetan to Pipsorang at Kurung Kumey District of Arunachal Pradesh. Cash credit limit of Rs. 3 Crores was sanctioned on 04.03.2009 and disbursed subsequently. On the contrary, the aforementioned work order of Rs. 18 Crores was never issued by the PWD, Sangram Division Arunachal Pradesh, in favour of M/s Rangne Enterprise. Thus, the loan was fraudulently procured through the false and fabricated letter dated 25.02.2009. It was also unearthed through investigation that the petitioner did not return the loan amount and consequentially, the loan account became irregular and finally, both the term loan and cash credit account were declared NPA, on 31.03.2011, by the Bank.

15. It is further contended that the petitioner, who was enlisted as Class-1 Contractor by the PWD, Arunachal Pradesh, was, however, dropped from the list of Class-1 Contractors, as

the petitioner failed repay the borrowed loan to the IDBI.

16. It is further contended that the bank officials of the IDBI Bank Limited, MSME Department, Guwahati, had connived with the petitioner and abused their official position while sanctioning and disbursing the term loan and cash limit of Rs. 2Crores plus Rs. 3Crores respectively. The registration of M/s Rangne Enterprise as Class-1 Contractor was cancelled. It is further contended that the investigation also revealed that fabricated and false documents were used by the petitioner and in connivance with the officials of the IDBI Bank Limited, MSME Department, the loan as alleged was procured. The CBI finally submitted charge sheet on finding sufficient materials and a *prima facie* case against the petitioner, under Sections 420/468/471 of the IPC.

17. It is further contended that it has been erroneously submitted that the CBI transgressed its jurisdiction without obtaining consent to proceed against the petitioner. The offence had occurred within the jurisdiction of Guwahati and Section 179 CrPC vests jurisdiction for inquiry and trial in a Court within whose jurisdiction any offence has been committed. No consent by the State of Arunachal Pradesh or the State of Assam was acquired specifically by the DPSE to investigate this case. The respondent No. 1 has prayed to dismiss the petition with costs.

18. The CBI has reiterated the allegations of the informant Er. Markio Tado through its reply. It is submitted that the petitioner submitted a loan application dated 21.01.2019 to the IDBI Bank Ltd., MSME Guwahati for Rupee Term Loan (RTL) of Rs. 2 Crores to purchase two BD-50 2 (Nos.) BE-200 with earth cutting and moving equipments from M/S Bharat Earth Movers Limited (BEML). It is also reiterated that the equipments would be engaged in construction of a 25 km long road from Chetam to Pipsorang at Kurung Kumey district. Its

entire allegation is not reiterated for the sake of brevity. The basic allegation against the petitioner is that the petitioner procured the loan of Rs.4 Crores as term loan in favour of M/S Rangne Enterprise, fraudulently on the basis of forged letters dated 19.01.2009 and 21.01.2009.

19. Meanwhile the petitioner failed to repay the loan to the IDBI and both the term loan and the extended cash credit of Rs.3 Crores was declared as NPA on 31.03.2011 by the bank and the closing debit balance in the TLA account was Rs.1,30,46,576/-(Rupees One Crore Thirty Lacs Forty Six Thousand Five Hundred Seventy Six) and in the CC account was Rs.4,37,70,224/- (Rupees Four Crores Thirty Seven Lacs Seventy Thousand Two Hundred Twenty Four).

20. It is also further reiterated through the reply that due to the conduct of the petitioner his name was dropped from the list of Class-1 contractor under the PWD. It is also submitted that without any work order, it was fraudulently projected by the petitioner that he was awarded the work order of Rs.18 Crores, which was in fact never awarded by the PWD thereby causing wrongful loss to the IDBI. At present, the petitioner is not a registered Class-1 contractor any more.

21. During investigation complicity of bank officials also surfaced in sanctioning and disbursing the aforesaid two facilities to M/S Rangne Enterprise. The Disciplinary Authority of IDBI Bank Ltd. was approached to accord sanction for prosecution of the given bank officials but the same was denied.

22. The petitioner's submission that the CBI has transgressed its jurisdiction is an



erroneous submission and is liable to be dismissed. The cause of action arose at Guwahati as the IDBI Bank from which the loan was procured by the petitioner is located at Guwahati. This is the reason why consent as stipulated under Section 6 of the DSPE Act, 1946 is not required by the CBI as the cause of action arose at Guwahati during the year 2009 and there was a prevailing general consent under Section 6 of the said Act in the State of Assam. Accordingly, the CBI submitted charge sheet on 30.06.2015 against the accused petitioner. The competent Court to try the offence is the Court of Special Judicial Magistrate, CBI, Guwahati. Acquiring the consent under Section 6 of the DSPE Act, 1946 by the State of Arunachal Pradesh is of no consequence. In the instant case, the learned Special Public Prosecutor has prayed to dismiss the petition.

23. Heard Mr I H Laskar, learned counsel for the petitioner, Mr M Haloi, learned Special Public Prosecutor for CBI and Mr N N B Choudhury, learned Additional Advocate General, Arunachal Pradesh, on behalf of respondent No. 3.

24. I have also scrutinized the documents annexed along with the petition.

25. The poignant issue raised in this case is that the CBI has transgressed its jurisdiction and has not obtained consent as mandated under Section 6 of the DSPE Act and embarked upon an investigation *dehors* jurisdiction.

26. I have considered the submissions of both the parties with circumspection.

27. The learned Special Public Prosecutor has submitted that the offence was committed in Assam and vide Notification No. PLA(V)187/88/86, dated 27.07.1989, the Government of Assam has accorded a consent to the extension of powers and jurisdiction of all the members

of the DSPE to the State of Assam for investigation of offence committed by any public servant, officer under the administrative control of the Central Government or Central Government Organization located in Assam. It was submitted by Mr Haloi that a general consent was given through this notification.

28. It is submitted on behalf of the petitioner that this general consent does not empower the CBI to conduct the investigation as a specific consent has to be obtained and it has already been replied to a query that no specific consent was given to the CBI to launch an investigation in connection with the instant case by the Government of Arunachal Pradesh or the Government of Assam. The learned counsel for the petitioner has drawn the attention of this Court to the Annexure-11 and Annexure 12 of the petition. Annexure-11 of the petition is the letter addressed by the petitioner to the Chief Secretary, Government of Arunachal Pradesh and Annexure-12 of the petition is the answer to his letter dated 08.09.2023, addressed to the Chief Secretary. The letter was signed by the Under Secretary (Home), Government of Arunachal Pradesh. The letter Annexure-12 is reproduced hereinbelow:-

“To

Shri Takam Sorang,

Former MLA, 20-Tali (ST) Assembly Constituency,

Arunachal Pradesh.

Sub:- Confirmation on handing over of criminal case to CBI by the State Govt. reg.

Ref: Your letter No. NIL dated 08.09.2023, addressed to Chief Secretary, GoAP.

Sir,

With reference to your letter on the above cited subject, I am directed to inform you that as per available record, no consent has been given in favour of handing over of instant matter

to the CBI by the State Government in terms of Section 6 of the Delhi Special Establishment Act, 1946.

However, it is pertinent to mention here that as per the letter dated 30.04.2013 from the Head of Branch & DIG, CBI, ACB Guwahati, it appears that the CBI has registered the instant matter suo motu.”

29. Against the submission on behalf of the CBI that the CBI took up the investigation of this case on the strength of the general consent vide Notification No. PLA(V)187/88/86, dated 27.07.1989, the learned counsel for the petitioner has submitted that a specific order has to be accorded for investigation by the CBI under Section 6 of the DPSE Act, 1946.

30. The learned counsel for the petitioner has relied on the decision of this Court in *Ms. Mayawati Vs. Union of India and Others reported in (2012) 8 SCC 106* wherein it has been observed that:

“38. We have already pointed out after reading various orders of this Court which show that Taj Corridor was the subject-matter of reference before the Special Bench. Various directions issued in the order dated 18.09.2003 have to be read in the light of the previous orders dated 16.07.2003, 21.08.2003 and 11.09.2003 as well as subsequent orders dated 25.10.2004 and 07.08.2006 wherein this Court has clarified that it was not monitoring the disproportionate assets case. We are satisfied that reading of all the orders of this Court clearly show that the direction to lodge FIR was issued only with respect to Taj Corridor matter, more particularly, irregularities therein. In fact, the direction was confined to find out as to who cleared the project of Taj Corridor and for what purpose it was cleared and whether there was any illegality or irregularity committed by officers and other persons concerned in the State. We have already noted all those orders which clearly state that the CBI is free to interrogate and verify the assets of the officers/persons relating to release of Rs. 17 crores in connection with Taj Corridor matter.

39. As discussed above and after reading all the orders of this Court which are available in the “compilation”, we are satisfied that this Court being the ultimate

custodian of the fundamental rights did not issue any direction to the CBI to conduct a roving inquiry against the assets of the petitioner commencing from 1995 to 2003 even though the Taj Heritage Corridor Project was conceived only in July, 2002 and an amount of Rs. 17 crores was released in August/September, 2002. The method adopted by the CBI is unwarranted and without jurisdiction. We are also satisfied that the CBI has proceeded without proper understanding of various orders dated 16.07.2003, 21.08.2003, 18.09.2003, 25.10.2004 and 07.08.2006 passed by this Court. We are also satisfied that there was no such direction relating to second FIR, namely, FIR No. R.C. 0062003A0019 dated 05.10.2003."

"41. We finally conclude that anything beyond the Taj Corridor matter was not the subject-matter of reference before the Taj Corridor Bench. Since the order dated 18.09.2003 does not contain any specific direction regarding lodging of FIR in the matter of disproportionate assets case against the petitioner, CBI is not justified in proceeding with the FIR No. R.C. 0062003A0019 dated 05.10.2003. In view of the above discussion, we are satisfied that the CBI exceeded its jurisdiction in lodging FIR No. R.C. 0062003A0019 dated 05.10.2003 in the absence of any direction from this Court in the order dated 18.09.2003 or in any subsequent orders."

"44. In the light of the above discussion, we hold that in the absence of any specific direction from this Court in the order dated 18.09.2003 or any subsequent orders, CBI has exceeded its jurisdiction in lodging FIR No. RC 0062003A0019 dated 05.10.2003. The impugned FIR is without jurisdiction and any investigation pursuant thereto is illegal and liable to be quashed, and is accordingly quashed. The writ petition is allowed."

31. Ms. Mayawati's case (supra) was also discussed by the Hon'ble Supreme Court in the case of *Fertico Marketing and Investment Private Limited and others Vs. Central Bureau of Investigation* and another reported in (2021) 2 SCC 525 wherein it has been held and observed that:

"18. It would be relevant to refer to the Notification issued by the Government of Uttar Pradesh dated 15-6-1989, which reads as under:-

*"Government of Uttar Pradesh Home
(Police) Section-1 No.3442/VIII-1-84/88*



Lucknow, dated : 15-6-1989

Notification

In pursuance of the Provisions of [Section 6](#) of the Delhi Special Police Establishment Act, 1946 (25 of 1946) the Governor of the State of Uttar Pradesh is pleased to accord consent to the extension of powers and jurisdiction of the members of the Delhi Special Police Establishment in whole of the State of Uttar Pradesh, for investigation of offences punishable under the [Prevention of Corruption Act, 1988](#) (49 of 1988), and attempts, abetments and conspiracies in relation to all or any of the offence or offences mentioned above and any other offence or offences committed in the course of the transaction and arising out of the same facts, subject however to the condition that no such investigation shall be taken up in cases relating to the public servants, under the control of the State Government except with the prior permission of the State Government.

By order in the name of the Governor.

Sd/-

(S.K. Tripathi)

Home Secretary to the Government of Uttar Pradesh”

19. *It could thus be seen that the State of Uttar Pradesh has accorded a general consent for extension of powers and jurisdiction of the Members of DSPE in the whole of the State of Uttar Pradesh for investigation of offences under the [Prevention of Corruption Act, 1988](#) and attempts, abetments and conspiracies in relation to all or any of the offence or offences committed in the course of the transaction and arising out of the same facts. The same is however with a rider, that no such investigation shall be taken up in cases relating to the public servants, under the control of the State Government, except with prior permission of the State Government. As such, insofar as the private individuals are concerned, there is no embargo with regard to registration of FIR against them inasmuch as no specific consent would be required under [Section 6](#) of the DSPE Act.”*

“22.....We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.”

It could thus be seen, that this Court has held that the cognizance and the trial cannot be set aside unless the illegality in the investigation can be shown to have brought about miscarriage of justice. It has been held that the illegality may have a bearing on the question of prejudice or miscarriage of justice but the invalidity of the investigation has no relation to the competence of the court.”

“24. This Court, in *Union of India v. Prakash P. Hinduja*¹², while relying on the judgment of this Court in *H.N. Rishbud*⁷, has observed thus: (*Prakash P. Hinduja case*¹², SCC p. 210, para 21)

“21.The Court after referring to *Prabhu v. Emperor*⁸ and *Lumbhardar Zutshi v. R*⁹ held that if cognizance is in fact taken on a police report initiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial, which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice and that an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the court for trial. This being the legal position, even assuming for the sake of argument that CBI committed an error or irregularity in submitting the charge-sheet without the approval of CVC, the cognizance taken by the learned Special Judge on the basis of such a charge-sheet could not be set aside nor could further proceedings in pursuance thereof be quashed. The High Court¹³ has clearly erred in setting aside the order of the learned Special Judge taking cognizance of the offence and in quashing further proceedings of the case.”

25. It could thus be seen, that this Court held that even for the sake of argument that CBI had committed an error or irregularity in submitting the charge-sheet without the approval of CVC, the cognizance taken by the learned Special Judge on the basis of such charge-sheet, would not be set aside nor could further proceedings in pursuance thereof be quashed.

26. Recently, a bench of this Court consisting one of us (Khanwilkar, J.) had an occasion to consider the aforesaid provisions of the *DSPE Act*, in *Kanwal Tanuj v. State of Bihar*¹⁴. In the said case, the question arose, as to whether when an offence was committed in the Union Territory and one of the accused was residing/employed in some other State outside the said Union Territory, the Members of DSPE had power to investigate the same, unless there was a specific consent given by the State concerned under *Section 6* of the DSPE Act. The contention on behalf of the appellant before the High Court was that since the appellant was employed in connection with the affairs of the Government of Bihar, an investigation was not permissible, unless there was a specific consent of State of Bihar under *Section 6* of the DSPE Act. This Court rejected the said contention holding that if the offence is committed in Delhi, merely because the investigation of the said offence incidentally transcends to the territory of State of Bihar, it cannot be held that the investigation against an officer employed in the territory of Bihar cannot be permitted, unless there was specific consent under *Section 6* of the DSPE Act. While considering the argument on behalf of the State, that such a consent was necessary for CBI to proceed with the investigation, this Court held that the respondent State having granted general consent in terms of *Section 6* of the DSPE Act vide notification dated 19.02.1996, it was not open to the State to argue to the contrary.

27. *In the present case, there are no pleadings by the public servants with regard to the prejudice caused to them on account of non-obtaining of prior consent under [Section 6](#) of the DSPE Act qua them specifically in addition to the general consent in force, nor with regard to miscarriage of justice.*

28. *Insofar as the reliance on the judgment of this Court in Mayawati⁶, the only question that fell for consideration before this Court was, as to whether any of the orders passed by this Court amounted to issuance of any direction to CBI to conduct a roving inquiry against the conduct of the petitioner commencing from 1995 to 2003 or as to whether the directions were restricted to irregularities in the Taj Corridor matter. The Court in the facts found that there was no such finding or satisfaction recorded by this Court in the matter of the disproportionate assets of the petitioner on the basis of the status report dated 11-9-2003 and as a matter of fact, the petitioner was not even a party before this Court."*

32. Reverting back to this case it is held that the petitioner has not stated that the illegality in the investigation has brought about a miscarriage of justice. By referring to the decision of the Hon'ble Supreme Court in *Kanwal Tanuj Vs. State of Bihar reported in (2020) 20 SCC 531*, the Hon'ble Supreme Court has observed in Fertico Marketing's case (supra) that the offence was committed in Delhi and one of the accused was residing/employed in some other State outside Delhi and the members of DSPE had power to investigate the same without a specific consent being given by the State concerned, under Section 6 of the DSPE Act.

33. In this instant case too, there are allegations against the officials of IDBI as well as the present petitioner, who is a resident of Arunachal Pradesh. The cause of action apparently arose in the State of Assam. As the investigation incidentally transcends to the territory of the State of Arunachal, it cannot be held that the investigation against the petitioner, who is a resident of Arunachal Pradesh cannot be permitted, unless there was specific consent under Section 6 of the DSPE Act.



34. A notification of general consent given by the State of Arunachal Pradesh has also been referred to by the learned Special Public Prosecutor for the CBI.

35. Although the petitioner has relied on the decision of *Ms. Mayawati's case (supra)* but the facts and circumstances of this case is not similar to *Mayawati's case*. In *Mayawati's case*, anything beyond the Taj Corridor matter was not the subject matter of reference before the Taj Corridor Bench. There was no specific direction regarding lodging of FIR against the matter of disproportionate assets against the petitioner *Mayawati*. It was thereby held that the CBI was not justified in proceeding against the petitioner without specific directions regarding lodging of FIR in the matter of disproportionate asset's case.

36. The Hon'ble Supreme Court held that there was no finding and satisfaction recorded by the Court in the matter of disproportionate assets of the petitioner in the Taj Corridor case and the petitioner was not even a party before the Hon'ble Court.

37. In the case on hand, the learned Special Public Prosecutor has submitted that the petitioner procured the loan as a Class-1 contractor on the basis of forged documents and in connivance with the officials of the IDBI. The petitioner was not even a public servant at the time of allegedly, fraudulently procuring the loan. The respondents have not disputed the Notification dated 27.07.1989 being Notification No. PLA(V) 187/88/36 which is reproduced herein below:

“: Government of Assam :

: NOTIFICATION : Dt. 27.7.89.

No. PLA(V) 187/88/36 : In pursuance of the provisions of section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 26 of 1946), the Governor of Assam hereby accords consent to the extension of powers and jurisdiction of all members of the Delhi



Special Police Establishment to the State of Assam for investigation of offences as hereunder committed by any public servant/officer under the administrative control of the Central Govt. or Central Govt. organisations located in Assam.

- (a) Offences under prevention of Corruption Act, 1988 (Act No. 49 of 1988).*
- (b) Attempts, abetments and conspiracies in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in the course of the same transaction arising out of the same facts.*

The consent so given shall not, however, be applicable in respect of matters concerning the affairs of the Govt. of Assam and also in respect of Officers/Public servants working in connection with the affairs of the Government of Assam."

38. I find force in the submission on behalf of the respondent No. 1, CBI. I have also relied on the decision of Hon'ble the Supreme Court in Fertico Marketing (supra).

39. It is apt to mention at this juncture that there is not even a whisper in the argument on behalf of the petitioner that the illegality in the investigation has brought about miscarriage of justice. It is submitted at the bar that this case is at the stage of trial and one witness has already been examined. I am of the firm belief that this petition cannot be allowed at this juncture by conclusively holding that due to lack of specific consent to proceed against the petitioner and due to lack of jurisdiction of the CBI, no case exists against the petitioner.

40. In the wake of my foregoing discussions, petition is hereby dismissed.

JUDGE

Comparing Assistant