**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 22ND DAY OF JULY, 2020**

**BEFORE**

**THE HON'BLE MR. JUSTICE NATARAJ RANGASWAMY**

**WRIT PETITION NO.8316 OF 2020 (S-RES)**

**BETWEEN:**

SRI SHASHI KUMAR SHIVANNA
SON OF LATE SHIVANNA,
AGED ABOUT 58 YEARS,
RESIDENT OF NO.798, 11TH MAIN,
VINAYAKA HBCS LAYOUT,
4TH PHASE, NAGARABHAVI,
BENGALURU-560072.

...PETITIONER

(BY SRI. UDAYA HOLLA, SENIOR ADVOCATE FOR SRI. VIVEK HOLLA, ADVOCATE)

**AND:**

1. THE GOVERNMENT OF KARNATAKA
REP. BY HOME SECRETARY,
VIDHANA SOUDHA,
BENGALURU-560001.

2. THE UNDER SECRETARY TO GOVERNMENT
HOME DEPARMENT (CRIMES),
GOVERNMENT OF KARNATAKA,
VIKAS SOUDHA,
BENGALURU-560 001.

3. CENTRAL BUREAU OF INVESTIGATION
PLOT NO.5-B, 6$^{TH}$ FLOOR,
CGO COMPLEX, LODHI ROAD,
NEW DELHI-110003.
REPRESENTED BY ITS DIRECTOR

} Impleaded as per Order dt.10.07.2020

...RESPONDENTS

(BY SRI. PRABHULING K. NAVADGI, ADVOCATE GENERAL FOR RESPONDENT NOs.1 AND 2;
SRI. P.PRASANNA KUMAR, ADVOCATE FOR RESPONDENT NO.3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO (a) ISSUE A WRIT OF CERTIORARI OR ANY OTHER WRIT, ORDER OR DIRECTION QUASHING THE GOVERNMENT ORDER BEARING NO.E-HD 40 COD 2019, BENGALURU DATED 25.09.2019 (ANNEXURE-D), ISSUED BY UNDER SECRETARY TO GOVERNMENT, HOME DEPARTMENT (CRIMES) THE SECOND RESPONDENT AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 15.07.2020 AND COMING ON FOR PRONOUNCEMENT OF ORDER THROUGH VIDEO CONFERENCE THIS DAY, THE COURT MADE THE FOLLOWING:-

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**ORDER**

Though this matter is listed for Orders, with the consent of the learned counsel appearing for the parties, this petition is taken up for final disposal. In terms of the Order dated 03.07.2020, the production of the authenticated copy of Annexure-D was dispensed subject to furnishing the same within four weeks. However, since the petition is taken up for final disposal, this requirement is also dispensed.

2. The petitioner has challenged the correctness of the consent accorded by the respondent No.1 under Section 6 of the Delhi Special Police Establishment Act, 1946 (henceforth referred as 'DSPE Act, 1946') permitting the respondent No.3 to investigate all purported violations of the provisions of the Prevention of Corruption Act, 1988 (henceforth referred to as 'PC Act, 1988'), by Mr. D.K. Shivakumar and other officials of the Government of Karnataka and to identify and investigate all persons

involved in the alleged violation of the provisions of the PC Act, 1988.

3. The writ petition sets out that the petitioner is employed as a Chief Manager at Hindustan Aeronautics Limited and is drawing a salary of Rs.2,50,000/- per month. The petitioner claimed that his father was a Joint Director of Health Services, Government of Karnataka, and had earned considerable properties during his tenure. The petitioner claims that he had succeeded to the properties of his father and had led a honest and meaningful life. He claimed that the premises of Mr. D.K. Shivakumar was raided during August 2017 and the Income Tax department had filed four complaints before the Metropolitan Magistrate, Bengaluru, which were transferred to the Special Court. The petitioner claimed that he was not arraigned as an accused in any of those cases. He further claimed that the accused in three cases were discharged while the fourth complaint in Spl. C.C. No.759/2018 was stayed by this Court. It is stated that

the Enforcement Directorate, Delhi, based on the fourth complaint that was stayed by this Court, commenced investigation under the Prevention of Money Laundering Act, 2002 (henceforth referred to as 'PMLA, 2002'). The Enforcement Directorate after commencing the investigation, wrote a letter dated 09.09.2019 to the Chief Secretary, Government of Karnataka, stating that Mr. D.K. Shivakumar and others appeared to have violated the provisions of the PC Act, 1988 when they were working in the Government of Karnataka and that the Enforcement Directorate had shared the same information with the Central Bureau of Investigation (CBI) and consequently the Chief Secretary to the Government of Karnataka was requested to take appropriate action in accordance with law. Pursuant thereto, the respondent No.1 sought an opinion of the Advocate General of Karnataka who gave his opinion on 25.09.2019. The learned Advocate General in his opinion had indicated that the Government Agency had to investigate as to what was the offence committed by the public servant and whether the offence related to any

recommendation or decision taken by such public servant and that only in such case the relevant provisions of the PC Act, 1988 would apply. The learned Advocate General is also stated to have mentioned in his opinion that the question of granting sanction under Section 19 of the PC Act, 1988 would arise only when a charge sheet is filed by the Investigating Agency.

4. It is alleged that contrary to the very legal opinion and without there being any material on record and without the respondent No.3 seeking any order of consent, the Government of Karnataka had passed an order dated 25.09.2019 according "sanction" to the respondent No.3 to investigate the offences.

5. Though multitudinous contentions were urged in the writ petition, the learned Senior Counsel for the petitioner restricted the contentions to the following:

> *(a) That the impugned order granting sanction to investigate the offences is without application of mind. The learned Senior Counsel for the petitioner relied upon the Judgments of*

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*the: Apex Court in* ***Mansukhlal Vithaldas Chauhan vs. State of Gujarat*** *reported in 1997 (7) SCC 622; High Court of Rajasthan in* ***Subhash Bhatia and others vs. State of Rajasthan and others*** *(S.B. Civil Writ Petition No.590 of 2010 disposed of on 10.12.2010) and the High Court of Jharkhand in* ***Ajay Kumar Mishra vs. State of Jharkhand and others*** *(WP (S) No.864 of 2004 disposed of on 21.06.2004) in support of this contention.*

*(b) That the impugned order does not bear out any reason for granting sanction to prosecute the concerned persons.*

*(c) That on a vague allegation, there cannot be a sanction to prosecute.*

*(d) That a person cannot be hounded by the Police or CBI merely to find out if he has committed any offence. That any order which has the flare of civil consequences can be passed only after hearing the person affected. The learned Senior Counsel relied upon the Judgment of the Apex Court in* ***Common Cause, a Registered Society vs. Union of***

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***India and Others*** *reported in 1999 (6) SCC 667 in support of this contention.*

*(e) That failure to produce all the relevant materials before the authority granting sanction, and the sanction merely based on a report of the Investigating Agency, would vitiate the sanction. He relied upon the Judgment of the Apex Court in* ***State of T.N. vs. M.M. Rajendran*** *reported in 1998 (9) SCC 268.*

*(f) That the CBI had not sought for any request for sanction and on the other hand, the Government of Karnataka on its own, granted consent for the investigation of the offence by the respondent No.3.*

*(g) The petitioner is an employee of the Hindustan Aeronautics Limited (HAL) and is not a State Government employee and despite the same, the respondent No.1 has passed the impugned order of sanction in a mechanical manner.*

6. The learned Advocate General appearing for the respondent Nos.1 and 2 first contended that the petitioner has wrongly secured a copy of the opinion rendered by him

to the Government of Karnataka and contended that the petitioner has to explain as to how he obtained a copy of such a privileged communication.

7. He further contended that the impugned order is only an administrative order and is not justiciable in the Court of law and further contended that the petitioner has no *locus standi* to question the impugned order. He further contended that the writ petition is wholly misconceived and not maintainable as the petitioner is not accused of any offence and the investigation would reveal whether the petitioner is involved in the commission of the alleged offence/s. He further contended that the petitioner has no choice of Investigation Agency and relied upon the Judgment of this Court rendered in Writ Appeal No.2213/2017 and connected cases (***Union of India vs. Asim Shariff and others*** disposed of on 26.03.2018). He further contended that the impugned order is only a consent which is totally different from a sanction to investigate or prosecute. He contended that the

precedents relied upon by the learned Senior Counsel for the petitioner relates to grant of sanction under other punitive enactments but does not relate to grant of consent under Section 6 of the DSPE Act, 1946.

8. The learned counsel for the respondent No.3 submitted that the impugned order is only a "consent" and not a "sanction" as contemplated under the provisions of the Criminal Procedure Code (CrPC) or under the PC Act, 1988. The learned counsel would rely upon the Judgment of the Apex Court in ***M. Balakrishna Reddy vs. Director, Central Bureau of Investigation, New Delhi*** reported in 2008 (2) SCC (Cri) 391.

9. In reply, the learned Senior Counsel for the petitioner submitted that a copy of the opinion of the Advocate General was obtained by Mr. D.K.Shivakumar through the proper channel. He has placed on record a letter dated 25-11-2019 addressed by Mr. D.K. Shivakumar requisitioning a copy of the opinion of the Advocate General. A copy of the letter dated 21-12-2019

addressed by the Department of Home, Government of Karnataka enclosing therewith a copy of the opinion of the Advocate General, is also placed on record. He also relied upon the Judgment of the Apex Court in the case of ***Magraj Patodia vs. R.K.Birla and Others*** reported in AIR 1971 SC 1295 to contend that there is no bar for admissibility of the document on the ground that such a document was procured illegally. The learned Senior Counsel also submitted that even if the impugned order is administrative in nature, then too the respondent Nos.1 and 2 are bound to disclose reasons and the absence of reasons would vitiate the order and he relied upon the Judgment of the Apex Court in ***M.P. Special Police Establishment vs. State of M.P. and Others*** reported in 2004 (8) SCC 788. The learned Senior Counsel also relied upon the Judgment of the Apex Court in the case of ***Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota v. M/s.Shukla and Brothers*** reported in 2010 (4) SCC 785.

10. Before adverting to the contentions urged, it is necessary to capture the bare facts shorn of other details. The Department of Income Tax is stated to have conducted a raid at a property at New Delhi belonging to Mr. D.K.Shivakumar, a member of the Karnataka Legislative Assembly. Following the raid, the Enforcement Directorate took up investigation for money laundering under the PMLA, 2002 and found that Mr. D.K.Shivakumar and many others were involved in *benami* investments in a number of properties where the final beneficiary was Mr. D.K.Shivakumar. The Enforcement Directorate found that the petitioner being a co-brother of Mr. D.K.Shivakumar and an Officer grade employee of Hindustan Aeronautics Limited was involved in property transactions on behalf of Mr. D.K.Shivakumar. The Enforcement Directorate shared the finding of its investigation with the respondent No.3 vide its letter dated 02-09-2019. Since the Enforcement Directorate felt that the persons investigated had violated the provisions of the PC Act, 1988 and as many of the persons were employed with the State of Karnataka, the

Enforcement Directorate forwarded its report to the respondent No.1 by a letter dated 09-09-2019 in terms of Section 66(2) of the PMLA, 2002 for "appropriate action". In so far as the present case is concerned and as it relates to the petitioner, the Enforcement Directorate mentioned about the complicity of the petitioner in the words appearing below:

> *"Sh. Sashi Kumar, a relative of Sh. D.K.Shivakumar, who works in Hindustan Aeronauticals Ltd (HAL) is found to be involved in property transactions on behalf of Sh. D.K.Shivakumar."*

11. Following the receipt of the letter of the Enforcement Directorate dated 09-09-2019, the respondent No.1 secured an opinion from the Advocate General who opined that sanction as contemplated under Section 17A of the PC Act, 1988 would arise only when a recommendation or decision taken by such public servant in discharge of his official function is in issue and that the sanction

contemplated under Section 19 of the PC Act, 1988 is to be obtained only after a charge sheet.

12. The respondent No.1 acting on the letter addressed to it by the Enforcement Directorate noticed the findings of investigation by the Enforcement Directorate and the fact that the Enforcement Directorate indicated that the persons investigated appeared to have violated the provisions of the PC Act, 1988 and thus decided to inquire/investigate based on the information received by it and thus accorded consent to the respondent No.3 – CBI to:

> *i) Inquire/investigate into all purported violations of the provisions of the Prevention of Corruption Act, 1988 by Sri. D.K.Shivakumar and other officials of Government of Karnataka in connection with the above matter.*
>
> *ii) Identification and investigation of person/s involved in connection with alleged violation of provisions of the Prevention of Corruption Act, 1988, in th*e above matter.

The respondent No.1 directed the concerned department officers / officials / others to hand over data / information / records as and when required by the CBI and cooperate in the inquiry/investigation. It is the aforesaid consent granted by the respondent No.1 that is challenged in this writ petition.

13. Having heard the learned Senior Counsel representing the petitioner and the learned Advocate General and the learned counsel for the respondent No.3, the following points would arise for determination:

*a) Whether the petitioner has the locus standi to challenge the consent granted by the respondent No.1 under Section 6 of the DSPE Act, 1946 ?*

*b) Whether consent granted under Section 6 of the DSPE Act, 1946 is akin to a sanction contemplated under Section 17A or Section 19 of the Prevention of Corruption Act, 1988 or under Section 197 of the Criminal Procedure Code, 1973 ?*

*c) Whether in the facts and circumstances of this case, whether the respondent No.1 was required to apply its mind ? If yes then whether the respondent No.1 has applied its mind before granting consent under Section 6 of the DSPE Act, 1946?*

14. Section 6 of the DSPE Act, 1946 which is the pivotal provision in the instant case reads as below:

> ***"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."*

15. The Apex Court speaking through a Constitution Bench in the case of ***State of West Bengal and others vs. Committee for protection of Democratic Rights, West Bengal and others*** reported in 2010 (3) SCC 571

after considering the distribution of legislative powers of the Parliament under Entry 80 of List I of the Seventh Schedule to the Constitution of India and the State Legislatures under Entry 2 of List II under the said Schedule to the Constitution of India, held as follows:

> "*From a bare reading of the afore-noted Constitutional provisions, it is manifest that by virtue of these entries, the legislative power of the Union to provide for the regular police force of one State to exercise power and jurisdiction in any area outside the State can only be exercised with the consent of the Government of that particular State in which such area is situated, except the police force belonging to any State to exercise power and jurisdiction to railway areas outside that State*".

The above position was reiterated by the Apex Court in its Judgment rendered in the case of ***Alok Kumar Verma Vs. Union of India and another*** reported in 2019 (3) SCC page 1, wherein it is held as follows:

> "*Shortly put and as already observed, investigation of anti corruption cases, economic offences and ordinary crimes of special importance have come to be vested in CBI which exercises its jurisdiction in the territory of all states and Union Territories with the consent of the State Governments*."

16. In order to sustain the *locus standi* of the petitioner to question the impugned Order, the learned Senior Counsel for the petitioner contended that the name of the petitioner was taken in the report sent by the Enforcement Directorate to the respondent No.1 and that the impugned Order passed by the respondent No.1, bore a reference to the name of the petitioner. The petitioner therefore contends that he has the *locus standi* to challenge the impugned Order granting consent.

17. De Smith in his book "Judicial Review of Administrative Action" observed, *locus standi* is understood to mean legal capacity to challenge an act or decision. Garner and Jones in their treatise on Administrative Law

are of the view that *locus standi* is a threshold question in the simplest or clearest cases of lack of standing. The Apex Court has elucidated the attributes of *locus standi* in the case of ***Fertilizer Corporation Kamagar Union (Regd.), Sindri and others vs. Union of India and others*** reported in AIR 1981 SC 344 in the following words:

> *"The question whether a person has the locus to file a proceeding depends mostly and often on whether he possesses a legal right and that right is violated."*

18. A perusal of the impugned Order indicates that the consent was to enable the respondent No.3 to investigate the violations of the PC Act, 1988 by Mr. D.K.Shivakumar and other officials of the Government of Karnataka and for identification and investigation of person/s involved in connection with the alleged violation of the provisions of the PC Act, 1988. The reference to the petitioner in the impugned Order was only incidental while recording the findings of the Enforcement Directorate and nothing else. The petitioner failed to establish as to how any of his rights

were infringed or violated by the consent granted by the respondent No.1 or as to how he was aggrieved by the consent granted under Section 6 of the DSPE Act, 1946. It is not the case of the petitioner that the respondent No.1 could not itself investigate the offences committed by Mr. D.K.Shivakumar and other officials of the Government under the PC Act, 1988, based on the documents/information provided by the Enforcement Directorate. It is not even the case of the petitioner that the respondent No.1 having regard to the dimensions of the crime could not consent to the investigation being done by the Centralised Agency, namely, the CBI. If that be so, in the face of the well settled jurisprudence that an accused has no choice of an Investigation Agency, the petitioner cannot claim to possess any *locus standi* to challenge the impugned order. The apprehension of the petitioner seems to be generated by the usage of the word "sanction" instead of "consent" in the impugned Order passed by the respondent No.1. The apprehension of the petitioner is ill founded and preposterous, as the

respondent No.1 had not and indisputably could not, grant sanction to prosecute the petitioner, who is an Officer employed with the HAL. The word "sanction" found in the impugned Order is wrongly employed as what is contemplated under Section 6 of the DSPE Act, 1946 is only a "consent" to enable the respondent No.3 to investigate the offences.

19. As a matter of fact, Section 6-A of the DSPE Act, 1946 contemplates approval of the Central Government before enquiring or investigating any offence under the PC Act, 1988 against any officer employed in any of its undertakings and is extracted below:

> ***"6-A. Approval of Central Government to conduct inquiry or investigation.-****(1) The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) except with the previous approval of the Central Government where such allegation relates to.:-*

> *a) the employees of the Central Government of the level of Joint Secretary and above; and*
>
> *b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government."*

20. The petitioner claims to be an officer employed with the Hindustan Aeronautics Limited which is a Company established by the Central Government. Thus, the petitioner may probably have a right to question any inquiry or investigation if it is commenced by the respondent No.3 without the approval of the Central Government but certainly, he has no *locus standi* to challenge the impugned Order of consent granted by the respondent No.1 under Section 6 of the DSPE Act, 1946.

21. In so far as the second point for consideration is concerned, the Apex Court in ***State of T.N. vs.***

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***Sivarasan alias Raghu alias Sivarasa and others*** reported in 1997 (1) SCC 682 has observed as follows:

> *"With respect to the finding regarding sanction we are of the opinion that the learned Sessions Judge was not right in treating it as not legal and valid. Section 7 does not require a sanction but only consent for prosecuting a person for an offence under the Explosive Substances Act. The object of using the word "consent" instead of "sanction" in Section 7 is to have a purely subjective appreciation of the matter before giving the necessary consent. To prove the consent the prosecution had examined P.W.52 Balachandran who was then acting as the P.A. of the District Collector. He has deposed about the requisition sent by the investigating officer and the reports and other documents sent along with it and consideration of the same by the District Collector before giving his consent. In his cross-examination he stated that he had not noticed in the relevant file statements of witnesses. Relying upon this answer given by the witness the learned Sessions Judge held that in absence of such statement the District Collector cannot be said to have applied his*

*mind properly to the facts of the case before granting the sanction. From the evidence of the witness one the copy of the proceedings of the Collector it appears that the Inspector of Police had sent his report regarding the evidence collected by him together with a copy of the FIR, the reports of the Forensic Department and other connected record. Thus, the Mahazars under which the "explosive substances" recovered and seized by the police from different accused were placed before the Collector and on consideration of all that material the collector had given his consent. We do not think that for obtaining consent of the Collector for prosecuting the accused for the offence punishable under the Explosive Substances Act it was necessary for the investigating officer to submit the statements of witnesses also, who had deposed about the movements of the accused and their activity of manufacturing bombs and grenades We, therefore, hold that the consent given by the Collector was quite legal and valid."* (emphasis supplied)

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22. The word "consent" is phonetically, etymologically and textually different from the word "sanction" and a world of difference pervades between the two and can never be used interchangeably. Though the respondent No.1 has termed it as sanction under Section 6 of the DSPE Act, 1946 in the impugned order, yet what can be granted is only a consent and nothing more. The word "consent" admits of myriad definitions as per its use in various legislations such as consent in contractual matters, consent in offences relating to human body, consent for establishment under the Environmental laws. In so far as the word "consent" found in Section 6 of the DSPE Act, 1946, it only means a "permission" of the concerned State in the Constitutional scheme of things. On the other hand, the word "sanction" found in Sections 17A and 19 of the PC Act, 1988, Section 197 in the Criminal Procedure Code inheres a thoughtful application of mind to ascertain whether the record placed before the Authority bears out enough material to proceed to prosecute. The requirement of application of mind while granting "sanction" is intended

to avoid frivolous or vexatious proceedings being adopted, particularly against public servants in the discharge of their official duties. The Judgments relied upon by the learned Senior Counsel appearing for the petitioner primarily relate to non-application of mind in the matter of granting sanction either under Section 197 of the CrPC or under Article 163 of the Constitution of India or under Section 19 of the PC Act, 1988 and thus cannot aid the petitioner.

23. As regards the third point for consideration, the grant of consent under Section 6 of the DSPE Act, 1946 is more in the nature of an administrative Order and does not require enormous rejigging as the issue is whether to allow the investigation to be done by the CBI or not. In so far as the present case is concerned, the raid was allegedly conducted by the Department of Income Tax followed by investigation by the Enforcement Directorate into the alleged acts of money laundering, which found violations of the PC Act, 1988. Thus, in the fitness of things, the respondent No.1 has felt it appropriate that the violations

of the PC Act, 1988 be investigated by the respondent No.3. Even if it is assumed that the respondent No.1 was required to apply its mind before granting the consent, the opinion of the Advocate General would indicate that the Enforcement Directorate had shared documents pertaining to the said investigation in the form of a complaint filed before the Special Court for Economic Offences, the communication made by the Enforcement Directorate to the Central Bureau of Investigation etc., and the impugned Order itself would indicate the circumstances that compelled it to grant consent. It is thus the subjective satisfaction of the respondent No.1 which has resulted in a consent under Section 6 of the DSPE Act.

In view of the above, this Writ Petition lacks merit and is therefore dismissed. No costs.

Sd/-
**JUDGE**

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