2025 INSC 11

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. of 2024
(@ SLP (Crl.) No. 10737 of 2023)

The State, Central Bureau of Investigation.

...Appellant(s)

Versus

A. Satish Kumar & Ors.

...Respondent(s)

Criminal Appeal No. of 2024
(@ SLP (Crl.) No. 10038 of 2023)

J U D G M E N T

C.T. RAVIKUMAR, J.

1. The self-same appellant, namely, the Central Bureau of Investigation (for short, 'the CBI') calls in question the common judgment dated 13.04.2023 in W.P. Nos.26990 of 2021 and 5441 of 2022 passed by the High Court of Andhra Pradesh. Writ Petition No.26990 of 2021 was filed by the first respondent in the former appeal and Writ Petition No.5441 of 2022 was filed by the first respondent in the latter appeal. As observed by the High

Court in the impugned common judgment, common question(s) of law arose for consideration in both the cases in identical circumstances and the High Court took W.P. No.26990 of 2022 as the lead case. Consequent to the consideration of the legal and factual position, the High Court allowed the said Writ Petition and for the same reasoning allowed W.P. No.5441 of 2022 as per the impugned common judgment.

2. Before dealing with the precise question(s) of law involved in the captioned appeals, it is appropriate to refer, succinctly, to the factual background that ultimately led to the filing of the Writ Petitions and their culmination in the impugned common judgment, as under:-

FIR No.10 (A)/2017 was registered for offences under Section 7 of the Prevention of Corruption Act, 1988 (for short, 'the PC Act') against the first respondent in Criminal Appeal No.898 of 2024 while he was working as Superintendent, Central Excise, Nandyal, (Kurnool), District in the State of Andhra Pradesh. The allegation was that he demanded and accepted an illegal gratification of ₹10,000/- from the original complainant, Sri. Arif, who was a contractor, on 09.05.2017 for issuance

of licence surrender certificate *qua* Excise Registration Certificate No. AHC PC 1141 KEM 001.

3. In the latter appeal, against the first respondent therein, FIR No.RC22(A)/2017-CBI/HYD was registered under Section 7 of the PC Act. The allegation was that while working as Accounts Assistant in the office of Senior Divisional Financial Manager, Guntakal, by abusing his office as public servant he demanded and obtained ₹15,000/- as illegal gratification from the original complainant therein, Sri. C. Dorrai Rajulu Naidu on 20.11.2017 for doing official favour of processing contract bills for the months of July, 2017 to September, 2017 and also previously sanctioned bills for the month of March to May, 2017 and June, 2017. In both the cases, after completion of investigation, chargesheets were filed before the Court of Principal, Special Judge for CBI Cases, Hyderabad. In the case of former appeal, it was so filed on 28.12.2017 and in the latter case it was so filed on 29.03.2018. The Court took cognizance, in the former case, on 16.07.2018 and took on it file as CC No.2/2018 and in the latter case, on taking cognizance it was taken on file as CC No.6/2018 on 03.08.2018. On 28.03.2019, the CBI, policy division order, redefining the territorial

jurisdiction of CBI, ACB, Hyderabad and Vishakhapatnam branches was issued. On 03.09.2019, the High Court of Telangana vide ROC No.334/E-1/2008 issued a notification regarding the jurisdiction of four Rayalaseema Districts of the State of Andhra Pradesh, namely, Kurnool, Kadappa, Chittoor and Ananthapur and for their inclusion in the jurisdiction of CBI Courts Vishakhapatnam by deleting the same from the jurisdiction of CBI Courts at Hyderabad.

4. Earlier, as per the Andhra Pradesh Re-Organisation Act, 2014 (for short, 'the A.P. Re-Organisation Act'), w.e.f. 02.06.2014, the State of Andhra Pradesh was bifurcated geographically into two States namely, the State of Andhra Pradesh and the State of Telangana.

Indisputably, despite the birth of two States by such bifurcation the High Court of Andhra Pradesh continued to be the common High Court for States i.e., Andhra Pradesh and Telangana till December, 2018. As relates the causative incident which led to the registration of the FIR No.10(A)/2017 against the first respondent in the former appeal, it occurred within the limits of Kurnool District and that of FIR No.RC22(A)/2017-CBI/HYD it occurred within the limits

of Ananthapur, both were in the State of Andhra Pradesh. Even after the bifurcation those districts remained with the State of Andhra Pradesh. As noticed earlier, both the aforesaid FIRs were registered for offences under Section 7 of the PC Act at Hyderabad in Telangana State by the CBI, ACB Hyderabad and on completion of investigation the CBI filed final reports before the Court of Principal, Special Judge for CBI cases, Hyderabad and that Court took cognizance of offences based on such final reports and took them on file and assigned CC Nos.2/2018 and 6/2018 respectively. As noted earlier, ROC Nos.334/E-1/2008 dated 03.09.2019 was issued by the High Court of Telangana, on its administrative side, directing to transfer the CBI cases pertaining to the districts of Kurnool, Kadappa, Chittoor and Ananthapur of Rayalaseema region of Andhra Pradesh to the Court of Special Judge for CBI cases at Vishakhapatnam. Accordingly, those cases were transferred and re-numbered respectively as CC No.35/2020 and CC No.37/2020. Still, later as per GOMS No.9 & 10 Law (LA, LA & J-Home Court A) Department dated 09.01.2020, IInd Special Judge for CBI Cases, Vishakhapatnam was shifted from Vishakhapatnam to Kurnool. Consequently, CC No.35/2020 was re-numbered as CC No.13 of 2022

and CC No.37/2020 was re-numbered as CC No.15 of 2022, on the files of the Court of Special Judge for CBI Cases, Kurnool. It is in the aforesaid circumstances that the respective first respondent in the captioned appeals who were the respective accused in CC No.13 of 2022 and CC No.15/2022 moved the aforementioned Writ Petitions which culminated in the impugned common judgment dated 13.04.2023.

5. Much prior to the bifurcation of the State of Andhra Pradesh into two States, as above, the Government of erstwhile undivided State of Andhra Pradesh vide order dated 14.05.1990, gave general consent for investigation by the CBI in the entire State of Andhra Pradesh. Going by the said notification, general consent was accorded under Section 6 of the Delhi Special Police Establishment Act, 1946 (for short, 'the DSPE Act') to exercise powers and jurisdiction under the said Act in the entire State of Andhra Pradesh for investigation of the offences mentioned thereunder. We will dilate on its impact and effect a little later.

6. Writ Petition No.26990 of 2021 was filed by the first respondent in the former appeal mainly seeking to issue a writ order or direction, more particularly, one in the nature of Writ of Mandamus by declaring the action of

conducting trial in CC No.35 of 2020 (later got the number of the case as CC No.13/2022), pending on the files of the Court of IInd Additional Special Judge for CBI Cases, Vishakhapatnam as illegal and to quash the same, raising various grounds. It was contended that the A.P. Re-Organisation Act was passed in 2014 and on 02.06.2014 viz., the appointed day, two States were created by bifurcating the erstwhile State of Andhra Pradesh, namely, State of Andhra Pradesh and the State of Telangana and, in the said circumstances, for the CBI to register and investigate FIR Nos.10(A)/2017 and RC22(A)/2017-CBI/HYD within the limits of the newly formed State of Andhra Pradesh, permission from the Government of Andra Pradesh was necessary as per the provisions of the 'DSPE Act'. It was further contended that the subject FIRs were registered by the CBI, ACB, Hyderabad in Telangana whereas the alleged offence in those FIRs had taken place in Kurnool and Ananthapur districts which were and still, within the State of Andhra Pradesh, and further that on the dates of registration of those FIRs there was no express permission as required under Section 6 of the DSPE Act to register them and also to investigate the same. Based on such grounds, it was contended that the entire investigation and the filing of

the charge sheet are vitiated and further that the Court at Hyderabad lacks jurisdiction to entertain the cases. Furthermore, it was contended that under the PC Act, a specific notification was to be issued either by the State or by the Central Government designating a Judge to try offences thereunder and only the Special Judge could try offences under the PC Act cases. It was also the contention of the Writ Petitioner/the first respondent that till December 2017, the Government of Andhra Pradesh did not accord consent for prosecution of Central Government servants under the provisions of the PC Act and therefore, Special Court for CBI Cases, Hyderabad could not have entertained the aforesaid case against him. So also, for the same reasons neither CBI Court nor the High Court had jurisdiction to transfer the cases to the CBI Court, Vishakhapatnam. The subsequent events could not cure the inherent lack of jurisdiction and as such, the entire proceedings got vitiated, it was further submitted.

7. Obviously, the same contentions, with necessary factual changes, were made on behalf of the first respondent in the latter appeal, who was the accused in CC No.15/2022, in Writ Petition No.5441 of 2022 to support the prayer to quash CC No.15/2022 and all

further proceedings thereof. The appellant herein who was one of the respondents therein, strongly resisted the contentions regarding inherent lack of jurisdiction and contended that the proceedings did not get vitiated as contended by the Writ Petitioners.

8. A scrutiny of the impugned judgment would reveal that the High Court upon reviewing the sequence of events held that the transfer of cases from the Additional CBI Court, Vishakhapatnam to Kurnool is not *per se* wrong and, in fact, it is in accordance with law. We may hasten to add here that the said finding is not under challenge before us, certainly, at the instance of the first respondent in the captioned appeals and hence, the same need not be considered any further. But then, even after holding thus, the High Court went on to consider the questions whether the lack of consent as also the lack of notification for a Special Court under the PC Act would go into the root of the matter and thereby vitiate the proceedings. Both the questions were answered in the affirmative and accordingly WP No.26990 of 2021 as also WP No.5441/2022 were allowed. Resultantly, the registration of the respective FIR and filing of the chargesheets were held as vitiated for the absence of consent from the State of Telangana to the CBI, to register

the FIRs and conduct investigation. It is aggrieved by the quashment of such proceedings viz., registration of FIR, filing of charge sheet and all further proceedings involved in CC No.13 of 2022 and CC No.37 of 2020 (now CC No.15/2022) as per the impugned common judgment that the appellant herein preferred the captioned appeals.

9. Heard Shri M. Nataraj, learned Additional Solicitor General for the appellant and the learned counsel for the respondents.

10. The learned Additional Solicitor General would contend that the impugned common judgment of the High Court is unsustainable and liable to be interfered with, for its failure to take into consideration various crucial factors in their true perspective. It is, *inter alia,* contended that Circular Memo No.13665/ SR/2014 dated 26.05.2014 was not properly considered and appreciated appropriately. It is submitted that the Circular Memo dated 26.05.2014 would clarify the position that all 'laws' applicable to the undivided State of Andhra Pradesh as on 01.06.2014 would continue to apply to the newly created States due to bifurcation, namely, the State of Telangana and the State of Andhra Pradesh w.e.f. 02.06.2014, despite the bifurcation of the

erstwhile State of Andhra Pradesh till altered, repealed or amended. It is also the contention that even after bifurcation of Andhra Pradesh, the S.P., CBI, Hyderabad and office of S.P. CBI Hyderabad were not deprived of their identity as 'Special Police Force' and to drive home the point the learned Additional Solicitor General, relied on the decision of this Court in ***State of Punjab and Others v. Balbir Singh & Ors.***[1] It is also contended that the High Court had failed to appreciate the fact that as on the date of the registration of the FIR involved in the captioned appeals there was consent to CBI in terms of the provisions of the Section 6 of the DSPE Act. It is furthermore contended that the High Court had gone wrong in holding that G.O.M.S. Nos.158 dated 28.11.2014, 67 dated 01.06.2016, No.168 dated 05.12.2017 and dated 03.08.2018 extending the general consent as orders pertaining to the State of Andhra Pradesh only.

11. The learned counsel appearing for the first respondent in the appeals stoutly resisted the contentions raised on behalf of the appellant and submitted that the entire sequence of events including

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[1] (1976) 3 SCC 242; 1975 INSC 238

the trapping, registration of the FIRs, filing of the chargesheets and taking cognizance etc. were considered by the High Court ultimately to arrive at the conclusion that the registration of the FIRs as also filing of the chargesheets in the cases on hand, are vitiated by law. It is further submitted that since such irregularities would go into the root of the matter denude jurisdiction. Hence, the High Court was right in quashing the respective FIRs and all further proceedings in pursuance thereof.

12. Before considering the rival contentions to examine their tenability it is only appropriate to scan the impugned judgment to find out the reasons specifically assigned by the High Court in coming to the conclusion that the registration of the FIR and the filing of the chargesheet in the cases on hand are vitiated in law. Such a consideration would reveal that the High Court considered the questions as to whether CBI had power to register the FIRs and investigate offences qua respondent No.1 in the appeals, whether the FIR for offences under the PC Act could be registered in Hyderabad in the State of Telangana when the offences alleged to have been committed at places within the State of Andhra Pradesh and for that reason whether the

CBI Court in the State of Telangana got jurisdiction to try the offence under the PC Act in respect of offences allegedly committed at places falling within the State of Andhra Pradesh.

13. Obviously, the High Court interpreted Section 4 of the PC Act and the decision of this Court in ***C.B.I., A.H.D., Patna v. Braj Bhushan Prasad***[2], and such other cases to come to the conclusion that the Court of the Special Judge for CBI cases, Hyderabad got no jurisdiction to try the offences involved in the cases on hand under the provisions of the PC Act. The High Court has also arrived at the conclusion that there was no consent required in terms of the provisions under Section 6 of the DSPE Act to register and investigate the offences against the Central Government employees on the date of registration of the FIR in the cases on hand.

14. The impugned judgment would reveal that the High Court firstly considered the power of the CBI *sans* consent of the Government of Andhra Pradesh to register FIR on the date(s) of registration of the subject FIRs and further to investigate them. After referring to Section 5 and 6 of the DSPE Act, it was held that they would make

[2] (2001) 9 SCC 432; 2001 INSC 485

it clear that though under Section 5 the Central Government could extend the area of operation of the said Act in a State it would be subject to the consent of the State Government concerned. To fortify the said view the High Court referred to and relied on the decision of this Court in ***Fertico Marketing and Investment Private Limited and Ors. v. Central Bureau of Investigation and Anr.***[3] The High Court also took note of the fact that in the cases on hand the causative incident that led to the registration of the FIRs occurred in districts, Kurnool and Anantpur respectively, within the State of Andhra Pradesh. The Court has also taken note of the fact that investigation was conducted by the CBI and chargesheets were submitted thereafter in the Special Court for CBI Cases at Hyderabad and thereafter, that Court took cognizance of the offence(s). Whether such actions are legal or of the nature which would go into the root of the matter to vitiate the proceedings, were considered taking note of various factors and facts. The High Court considered the facts that the A.P. Reorganisation Act came into force on 02.06.2014 and thereafter, general consent was given

[3] (2021) 2 SCC 525; 2020 INSC 645

only by the State of Andhra Pradesh as per GOMS No.158 dated 28.11.2014 and then by GOMS No.67 dated 01.06.2016 and yet again by GOMS No.184 dated 05.12.2017 and 109 dated 03.08.2018 to come to the conclusion that as on the date(s) of registration of the subject FIRs there was no power vested with the CBI, ACB, Hyderabad in Telangana to register crime in regard to the offence taken place in Kurnool as also in Anantapur in the State of Andhra Pradesh and also to conduct investigation thereon. It is also evident that the High Court arrived at the conclusion that GOMS 88 dated 07.08.2012 by which CBI Court at Hyderabad was given the power to exercise jurisdiction over the districts in Telangana as also Rayalaseema Districts of Andhra Pradesh namely, Chittoor, Ananthapur, Kadappa and Kurnool ceased to be in force after the State Reorganisation Act came into force on 02.06.2014 and therefore, the Court of the Special Judge for CBI Cases, Hyderabad ceased to have jurisdiction to deal with the cases under the PC Act in respect of the aforementioned four districts falling within the Rayalaseema regions of State of Andhra Pradesh. It was also held that in such circumstances the Court of Special Judge for CBI Cases, Hyderabad could not have entertained the cases after

02.06.2014 as the required notification under the PC Act was not issued subsequent to 02.06.2014, the appointed day under the A.P. Reorganisation Act.

15. Having gone through the reasons that made the High Court to come to such conclusions as mentioned and to quash the subject FIRs and the subsequent proceedings thereon, we will consider the contentions raised to mount attack against the same. As noted hereinbefore, the core contention of the appellant is that the High Court had failed to consider Circular Memo No.13665/SR/2014 dated 26.05.2014 and its true import. Indeed, the said circular was issued in terms of Section 3 of the A.P. Reorganisation Act. Para 2 of the said circular reads thus:-

> *"2. In this connection, it 1s stated that "law" as defined in section 2(f) of the Act is as follows :-*
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> *(f) 'law' includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of 1aw in the who1e or in any part of the existing State of Andhra Pradesh"*

16. Clauses (i) to (iii) of Paragraph 6 of the said circular are also relevant in the circumstances and they read thus:

"(i) all the laws, which were applicable to the undivided State of Andhra Pradesh, as on 1-6-2014, would continue to apply to the new States i.e., State of Telangana and State of Andhra Pradesh created Dy the Central Act, with effect from 2-6-2014 notwithstanding the bifurcation of the erstwhile Pradesh;
(ii) to facilitate their application in respect of the State of Telangana and the State of Andhra Pradesh, the appropriate Government may, before the expiration of two years from 2-6-2014, by order, make such adaptions and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon,
(iii) every such law as adapted or modified as above, will continue till such time it altered, repealed or amended by a competent Legislature or other competent authority, in the respective State."

17. In contextual situation it is relevant to refer to the decision of this Court in ***Commissioner of Commercial Taxes, Ranchi and Ors. v. Swarn Rekha Cokes and Coals (P) Ltd. and Ors***[4]. This Court was considering the question of continuity of laws in force in the erstwhile State in the new States carved out of erstwhile State with reference to the Bihar Reorganisation Act, 2000. It was

[4] (2004) 6 SCC 689; 2004 INSC 378

held that States reorganisation legislations must be construed in the light of the unusual situation created by the creation of a new State and the object sought to be achieved. It was held therein further that the laws which were applicable to the undivided State of Bihar would continue to apply to the new States created by the Act and that the laws that operated would continue to operate notwithstanding the bifurcation of the erstwhile State of Bihar and creation of the new State of Jharkhand. They would continue in force until and unless altered, repealed or amended, it was further held.

18. It is in the light of the ratio of the aforesaid decision and the wide definition given to the term 'law' under paragraph 2 of the circular dated 26.05.2014 issued under Section 3 of the AP Reorganisation Act, that the effect of GOMS No.88 dated 07.08.2012 and such other Government orders or other instruments in force and brought into force, have to be looked into while considering the questions involved in instant cases. In terms of Sections 3 and 4 of the PC Act only a Special Judge designated as such by notification, by a State or Central Government would have the power to entertain cases under the provisions of the PC Act. Indisputably, as per GOMS No.88 dated 07.08.2012 the erstwhile State

of Andhra Pradesh notified the CBI Court at Hyderabad to exercise jurisdiction over the districts in Telangana as also in Rayalaseema Districts of AP namely, Chittoor, Anandpur, Kadappa, and Kurnool to try offences under the PC Act. The effect of the said GO dated 07.08.2012 and some other Government orders, hereinafter to be referred, have to be looked into in the light of Circular Memo dated 26.05.2014, as stated earlier.

19. The term 'law' was defined in para 2(f) of the Circular Memo dated 26.05.2014. The said definition, as extracted above, would reveal that it would take in any order, bye-law, scheme, notification, or any other instrument having immediately before the appointed day viz., 02.06.2014, the force of law in the whole or in any part of the existing State of Andhra Pradesh. Thus, the cumulative effect of para 2(f), clauses (i) to (iii) of para 6 of the said Circular dated 26.05.2014 as also other notifications issued prior to 02.06.2014 or in modification of the then existing law(s), as it is to be understood in terms of the definition in para 2 (f), especially, in the absence of repeal or alteration or amendment in the State of Telangana also have to be looked into while considering the question(s) involved in the cases on hand.

20. Now, we will refer to GORT No.1247, Home (SC.A Department) dated 14.05.1990 whereunder general consent for investigation by the CBI in the entire State of Andhra Pradesh was accorded under Section 6 of the DSPE Act to exercise powers and jurisdiction under the said Act. It, in so far as relevant, reads thus:-

> *"Under Section-6 of the Delhi Special Police Establishment Act, 1946 (Central Act XXV of 1946), the Governor of Andhra Pradesh hereby accord general consent to all the members of Delhi Special/ Establishment to / Police exercise the powers and jurisdiction under the said act in the State of Andhra Pradesh for investigation of the offences mentioned hereunder against (i) Private Persons for alleged offences committed whether acting separately or in conjunction with Central Government/undertaking employees and in case of State Govt. employees upto First Gazetted level when acting along with or in conjunction with private persons or Central Govt. employees. However, in case of State Government employees from 2nd level gazetted posts sitting or former legislators, Members of Parliament and Members of Legislative Assembly (even Ministers, Chairmen of Corporation etc.) the CBI shall obtain prior consent of the State Government in each case".*

21. In continuation of the GORT No.1247, Home (SC.A Department) dated 14.05.1990, the general consent of

Government of Andhra Pradesh to exercise powers and jurisdiction under the DSPE Act was accorded, rather, extended as per subsequent Govt. orders such as GOMS No.477, Home, "SC.A Department" dated 18.06.1994, GOMS No.158, Home, "SC.A Department" dated 28.11.2014, GOMS No.67, Home, "SC.A Department" dated 01.06.2016, GOMS No.184, Home, "SC.A Department" dated 05.12.2017 and GOMS No.109 Home, "SC.A Department" dated 03.08.2018. Obviously, under the said Government orders the order granting general consent as has been mentioned in 14.05.1990 was extended within the limits of Andhra Pradesh. There cannot be any doubt with respect to the fact that under such Govt. orders according general consent to exercise the powers and jurisdiction under DSPE Act against private persons for alleged offences whether acting separately or in conjunction with Central Govt./undertaking employees and State Govt. employees upto first gazetted level, to all members of DSPE. This cannot be construed or understood to mean that employees of the Central Government/ Central Government undertaking and State Government employees up to first gazetted level are beyond the reach of the CBI and only private persons acting

separately or in conjunction with such categories of employees alone can be proceeded against. It is also to be noted that even according to the High Court in the impugned judgment, GOMS dt. 07.08.2012 issued by the State of Andhra Pradesh CBI Court at Hyderabad was given the power to exercise jurisdiction over Rayalaseema districts of Andhra Pradesh, namely, Chittoor, Anantpur, Kadappa and Kurnool to try cases registered under the PC Act and the said provision continued thereafter by subsequently issued Govt. orders. In view of the impact of para 2(f) and clauses (i) to (ii) under para 6 such notification or circulars which were in force prior to the bifurcation or modified subsequently, in the absence of repeal or amendment as relates the subject matter involved thereunder within the limits of State of Telangana should be presumed to exist within the limits of State of Telangana and therefore, the finding of the High Court all such 'laws' pertain only to the State of Andhra Pradesh cannot be the correct law and the legal fiction should be that such laws would be in force in the new State unless altered or repealed or amended by it, in accordance with law. If in the light of the aforesaid Govt. orders especially dated 26.05.2014, the position is not construed in the said manner it will

create only lawlessness or in other words a total vacuum in the subject matter(s) in which event persons could engage in such offences with impunity to certain extent. There cannot be any doubt that virtually it is to avoid such a situation that the aforementioned Government orders were issued and, therefore, any contra-construction would defeat the very soul of the provisions under the PC Act as also the very intent and purpose of the Government orders which were given the status of 'law' by virtue of definition under para 2(f) of the Circular Memo dated 26.05.2014 issued under Section 3 of the AP Reorganisation Act.

22. In the light of the discussion as above and construction of the Govt. orders it can only be held that the High Court had erred in holding that there was no notification issued conferring the status of Special Court in terms of Section 4 of the PC Act to the CBI Court, Hyderabad. Now, the transfer of the cases concerned subsequent to the CBI Policy Division order regarding the re-defining the territorial jurisdiction of CBI, Hyderabad and Vishakhapatnam branches dated 28.03.2019 and issuance of notification by the High Court of Telangana vide ROC No.334/E-1/2008 dated 03.09.2019 and the transfer of CC Nos.35 of 2020 and 37

of 2020 to the Court of the Special Judge for CBI Cases, Kurnool were held as in accordance with law by the High Court. In such circumstances and in the light of the conclusion already arrived at, the terms of the provisions under circular memo dated 26.05.2014 all "laws" applicable to the undivided State of Andhra Pradesh on 01.06.2014 would continue to apply to the new States, namely, the State of Telangana and the State of Andhra Pradesh despite the bifurcation of the erstwhile State of Andhra Pradesh till such time they were altered, repealed or amended.

23. Another aspect that skipped the attention of the High Court, which will independent of the aforesaid consideration and conclusion on the Government orders, cloth the CBI with the power to register and investigate the offence alleged against the first respondent in the captioned appeals.

24. A. Satish Kumar, the first respondent in the former appeal was the accused in CC No.13 of 2022. He was working as Superintendent in Central Excise at Nandyal (Kurnool) district. Sri Challa Sreenivasulu was working as Accounts Assistant in the office of the Senior Divisional Financial Manager, South Central Railway, Guntakal. The offence alleged against both of them was under

Section 7 of the PC Act, which is a Central Act. Bearing in mind the aspects we will consider the challenge against the impugned judgment.

25. Irrespective of the place of posting, the aforesaid factual position would go onto show that they were Central Government employees/Central Government Undertaking employees and allegedly committed serious offence under PC Act, which is a Central Act. Therefore, the question is in such circumstances merely because such an employee works within the territory of a particular State, to register an FIR by the CBI in connection with commission of an offence under a Central Act whether consent from the State Government concerned is required or not? The said question is no longer a legal conundrum in view of the decisions of this Court in ***Kanwal Tanuj v. State of Bihar and Ors.***[5] and in ***Fertico Marketing and Investment Pvt. Ltd.'s*** case (*supra*).

26. In ***Kanwal Tanju****'s* case (*supra*), after extracting Section 5 and 6 of DSPE Act, in para 19 thereof, this Court held thus: -

> *"19. Sections 5 and 6 of the 1946 Act read thus: -*

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[5] 2020 SCC OnLine SC 395; 2020 INSC 357

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 to 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 the 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 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 in charge 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 the 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.

26. 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.

27. …

28. 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."

27. In the decision in **Fertico Marketing and Investment Pvt. Ltd.'s** case (*supra*), this Court in paragraph 26 held thus:-

"26. Recently, a bench of this Court consisting one of us (Khanwilkar J.) had an occasion to consider the aforesaid provisions of DSPE Act, in Kanwal Tanuj v. State of Bihar, (2020) 20 SCC 531. 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 concerned State 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."

28. In the contextual situation it is also relevant to refer to Resolution No.4-31-61-T dated 01.04.1963 of Ministry of Home Affairs establishing the Central Bureau of Investigation. Going by the said resolution dated 01.04.1963, it provides the function of the CBI in cases where public servants under the control of the Central Government are involved either themselves or with the State Government servants and/or other person.

29. Thus, upon diallage we find it difficult to accede to the contentions of the first respondent in the captioned appeals made in a bid to support and sustain the impugned judgment. In such circumstances, considering the questions from such different angles we are of the firm view that the impugned judgment whereunder subject FIRs and further proceedings in pursuance thereof, were quashed cannot be sustained.

30. Hence, the appeals are allowed. Accordingly, the impugned common order dated 13.04.2023 passed by the High Court in WP No.26990 of 2021, and 5441 of 2022 are set aside. Resultantly, CC Nos.13 of 2022 and 15 of 2022 arising respectively from the FIR Nos.10A/2017 and RC22(A)/2017, CBI, HYD, are restored into the files of Court of Special Jude for CBI Cases, Kurnool, where it was pending at the time of passing of the impugned order. Needless to say, that after following the requisite procedures and in accordance with law the trial Court shall continue with those cases against the respective first respondent in the captioned appeals.

......................., J.
(C.T. Ravikumar)

......................., J.
(Rajesh Bindal)

New Delhi;
January 02, 2025.