REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1193 OF 2012
(Arising out of SLP(C) No. 27535 of 2010)

Dr. Subramanian Swamy ... Appellant

versus

Dr. Manmohan Singh and another ... Respondents

J U D G M E N T

G. S. Singhvi, J.

1. Leave granted.

2. Whether a complaint can be filed by a citizen for prosecuting a public servant for an offence under the Prevention of Corruption Act, 1988 (for short, 'the 1988 Act') and whether the authority competent to sanction prosecution of a public servant for offences under the 1988 Act is required to take an appropriate decision within the time specified in clause I(15) of the directions contained in paragraph 58 of the judgment of this Court in Vineet Narain v. Union of India (1998) 1 SCC 226 and the guidelines issued by the

Central Government, Department of Personnel and Training and the Central Vigilance Commission (CVC) are the question which require consideration in this appeal.

3. For the last more than three years, the appellant has been vigorously pursuing, in public interest, the cases allegedly involving loss of thousands of crores of rupees to the Public Exchequer due to arbitrary and illegal grant of licences at the behest of Mr. A. Raja (respondent No. 2) who was appointed as Minister for Communication and Information Technology on 16.5.2007 by the President on the advice of Dr. Manmohan Singh (respondent No. 1). After collecting information about the grant of licences, the appellant made detailed representation dated 29.11.2008 to respondent No. 1 to accord sanction for prosecution of respondent No. 2 for offences under the 1988 Act. In his representation, the appellant pointed out that respondent No. 2 had allotted new licences in 2G mobile services on 'first come, first served' basis to novice telecom companies, viz., Swan Telecom and Unitech, which was in clear violation of Clause 8 of the Guidelines for United Access Services Licence issued by the Ministry of Communication and Information Technology vide letter No.10-21/2005-BS.I(Vol.II)/49 dated 14.12.2005 and,

thereby, caused loss of over Rs. 50,000 crores to the Government. The appellant gave details of the violation of Clause 8 and pointed out that the two officers, viz., R.J.S. Kushwaha and D. Jha of the Department of Telecom, who had opposed the showing of undue favour to Swan Telecom, were transferred just before the grant of licences and Bharat Sanchar Nigam Limited (BSNL) which had never entered into a roaming agreement with any operator, was forced to enter into such an agreement with Swan Telecom. The appellant further pointed out that immediately after acquiring 2G spectrum licences, Swan Telecom and Unitech sold their stakes to foreign companies, i.e., Etisalat, a telecom operator from UAE and Telenor of Norway respectively and, thereby, made huge profits at the expense of public revenue. He claimed that by 2G spectrum allocation under respondent No. 2, the Government received only one-sixth of what it would have received if it had opted for an auction. The appellant pointed out how respondent No. 2 ignored the recommendations of the Telecom Regulatory Authority of India (TRAI) and gave totally unwarranted benefits to the two companies and thereby caused loss to the Public Exchequer. Some of the portions of the appellant's representation are extracted below:

"Clause 8 has been violated as follows: While Anil Dhirubhai Ambani Group (ADAG), the promoters of Reliance Communications (R Com), had more than 10 per cent stake in Swan Telecom, the figures were manipulated and showed as 9.99 per cent holding to beat the said Clause. The documents available disclose that on March 2, 2007, when Swan Telecom applied for United Access Services Licences, it was owned 100 per cent by Reliance Communications and its associates viz. Reliance Telecom, and by Tiger Trustees Limited, Swan Infonet Services Private Limited, and Swan Advisory Services Private Limited (see Annexure I). At one or the other point of time, employees of ADAG (Himanshu Agarwal, Ashish Karyekar, Paresh Rathod) or its associate companies have been acquiring the shares of Swan Telecom itself. But still the ADAG manipulated the holdings in Swan to reduce it to only 9.99 per cent. Ambani has now quietly sold his shares in Swan to Delphi Investments, a Mauritius based company owned by Ahmed O. Alfi, specializing in automobile spare parts. In turn, Swan has sold 45% of its shares to UAE's Emirates Telecom Corporation (Etisalat) for Rs.9000 crores! All this is highly suspicious and not normal business transactions. Swan company got 60% of the 22 Telecom licenced areas at a throw away price of Rs.1650 crores, when it was worth Rs.60,000 crores total.

Room has operations in the same circles where the application for Swan Telecom was filed. Therefore, under Clause 8 of the Guidelines, Swan should not have been allotted spectrum by the Telecommunication Ministry. But the company did get it on Minister's direction, which is an undue favour from him (Raja). There was obviously a quid pro quo which only a CBI enquiry can reveal, after an FIR is registered. There is no need for a P/E, because the CVC has already done the preliminary enquiry.

Quite surprisingly, the 2G spectrum licences were priced at 2001 levels to benefit these private players. That was when there were only 4 million cellphone

subscribers; now it is 350 million. Hence 2001 price is not applicable today.

Immediately after acquiring 2G spectrum licences both Swan and Unitech sold their stakes to foreign companies at a huge profits. While Swan Telecom sold its stakes to UAE telecom operator Etisalat, Unitech signed a deal with Telenor of Norway for selling its share at huge premiums.

In the process of this 2G spectrum allocation, the government received only one-sixth of what it would have got had it gone through a fresh auction route. The total loss to the exchequer of giving away 2G GSM spectrum in this way – including to the CDMA operators – is over Rs.50,000 crores and is said to be one of the biggest financial scams of all times in the country.

While approving the 2G licences, Minister Raja turned a blind eye to the fact that these two companies do not have any infrastructure to launch their services. Falsely claiming that the Telecom Regulatory Authority of India had approved the first-cum-first served rule, Raja went ahead with the 2G spectrum allocation to two debutants in the Telecom sector. In fact earlier TRAI had discussed the spectrum allocation issue with existing services providers and suggested to the Telecom Ministry that spectrum allocation be made through a transparent tender and auction process. This is confirmed by what the TRAI Chairman N. Misra told the CII organized conference on November 28, 2008 (Annexure 2). But Raja did not bother to listen to the TRAI either and pursued the process on 'first come, first served' basis, benefiting those who had inside information, causing a loss of Rs.50,000 crores to the Government. His dubious move has been to ensure benefit to others at the cost of the national exchequer."

The request made in the representation, which was relied upon by the learned Attorney General for showing that the

appellant had himself asked for an investigation, is also extracted below:

> "According to an uncontradicted report in CNN-IBN news channel of November 26, 2008, you are said to be "very upset with A. Raja over the spectrum allocation issue". This confirms that an investigation is necessary, for which I may be given sanction so that the process of law can be initiated.
>
> I, therefore, writ to demand the grant of sanction to prosecute Mr. A. Raja, Minister for Telecom of the Union of India for offences under the Prevention of Corruption Act. The charges in brief are annexed herewith (Annexure 3)."

4. Since the appellant did not receive any response from respondent No.1, he sent letters dated 30.5.2009, 23.10.2009, 31.10.2009, 8.3.2010 and 13.3.2010 and reiterated his request/demand for grant of sanction to prosecute respondent No.2. In his letter dated 31.10.2009, the appellant referred to the fact that on being directed by the CVC, the Central Bureau of Investigation (CBI) had registered a first information report, and claimed that *prima facie* case is established against respondent No. 2 for his prosecution under Sections 11 and 13(1)(d) of the 1988 Act. The appellant also claimed that according to various Supreme Court judgments it was not necessary to carry out a detailed inquiry, and he had produced sufficient evidence for

grant of sanction to initiate criminal prosecution against respondent No. 2 for the misuse of authority and pecuniary gains from corrupt practices. In his subsequent letters, the appellant again asserted that the nation had suffered loss of nearly Rs.65,000 crores due to arbitrary, unreasonable and mala fide action of respondent No.2. In letter dated 13.3.2010, the appellant referred to the proceedings of the case in which this Court refused to interfere with the order of the Delhi High Court declaring that the decision of respondent No.2 to change the cut off date fixed for consideration of applications made for grant of licences was arbitrary and mala fide.

5. After 1 year and 4-1/2 months of the first letter written by him, Secretary, Department of Personnel and Training, Ministry of Personnel sent letter dated 19.3.2010 to the appellant mentioning therein that the CBI had registered a case on 21.10.2009 against unknown officers of the Department of Telecommunications (DoT), unknown private persons/companies and others and that the issue of grant of sanction for prosecution would arise only after perusal of the evidence collected by the investigating agency and other material provided to the Competent Authority and that it

would be premature to consider sanction for prosecution at that stage.

6. On receipt of the aforesaid communication, the appellant filed Civil Writ Petition No. 2442/2010 in the Delhi High Court and prayed for issue of a mandamus to respondent No.1 to pass an order for grant of sanction for prosecution of respondent No. 2. The Division Bench of the Delhi High Court referred to the submission of the learned Solicitor General that when respondent No. 1 has directed investigation by the CBI and the investigation is in progress, it is not permissible to take a decision on the application of the appellant either to grant or refuse the sanction because that may affect the investigation, and dismissed the writ petition by recording the following observations:

> "The question that emanates for consideration is whether, at this stage, when the investigation by the CBI is in progress and this Court had earlier declined to monitor the same by order dated 25th May, 2010, which has been pressed into service by the learned Solicitor General of India, it would be appropriate to direct the respondent no. 1 to take a decision as regards the application submitted by the petitioner seeking sanction to prosecute.
>
> In our considered opinion, when the matter is being investigated by the CBI, and the investigation is in progress, it would not be in fitness of things to issue a mandamus to the first respondent to take a decision on the application of the petitioner."

7. The special leave petition filed by the appellant, out of which this appeal arises, was initially taken up for consideration along with SLP(C) No. 24873/2010 filed by the Center for Public Interest Litigation against order dated 25.5.2010 passed by the Division Bench of the High Court in Writ Petition (Civil) No. 3522/2010 to which reference had been made in the impugned order. During the course of hearing of the special leave petition filed by the appellant, the learned Solicitor General, who had appeared on behalf of respondent No. 1, made a statement that he has got the record and is prepared to place the same before the Court. However, keeping in view the fact that the record sought to be produced by the learned Solicitor General may not be readily available to the appellant, the Court passed order dated 18.11.2010 requiring the filing of an affidavit on behalf of respondent No. 1. Thereafter, Shri V. Vidyavati, Director in the PMO filed affidavit dated 20.11.2010, which reveals the following facts:

> "(i) On 1.12.2008, the Prime Minister perused the letter and noted "Please examine and let me know the facts of this case". This was marked to the Principal Secretary to the Prime Minister who in turn marked it to the Secretary. The Secretary marked it to me as Director in the PMO. I prepared a note dated 5.12.2008 factually

summarizing the allegations and seeking approval to obtain the factual position from the sectoral side (in the PMO dealing with Telecommunications).

(ii) On 11.12.2008, a copy of appellant's letter dated 29.11.2008 was sent to the Secretary, Department of Telecommunication for submitting a factual report. The Department of Telecommunication sent reply dated 13.02.2009 incorporating his comments.

(iii) In the meanwhile, letters dated 10.11.2008 and 22.11.2008 were received from Shri Gurudas Gupta and Shri Suravaran Sudhakar Reddy respectively (copies of these letters have not been produced before the Court). The same were forwarded to the Department of Telecommunication on 25.03.2009 for sending an appropriate reply to the appellant.

(iv) On 01.06.2009, letter dated 30.05.2009 received from the appellant was placed before respondent No.1, who recorded the following endorsement "please examine and discuss".

(v) On 19.06.2009, the Director of the concerned Sector in the PMO recorded that the Minister of Telecommunications and Information Technology has sent D.O. letter dated 18.06.2009 to the appellant. When letter dated 23.10.2009 of the appellant was placed before respondent No.1, he recorded an endorsement on 27.10.2009 "please discuss".

(vi) In response to letter dated 31.10.2009 of the appellant, respondent No.1 made an endorsement "please examine".

(vii) On 18.11.2009, respondent No.1 stated that Ministry of Law and Justice should examine and advice. The advice of Ministry of Law and Justice was received on 8.2.2010. Para 7 thereof was as follows:

> "From the perusal of letter dated 23.10.2009 and 31.10.2009, it is noticed that Shri Swamy wants to rely upon the action and investigation of the CBI to collaborate and strengthen the said

> allegation leveled by him against Shri A. Raja, Minister for Communication and Information Technology. It is specifically mentioned in Para 2 of the letter dated 31.10.2009 of Shri Swamy that the FIR was registered by the CBI and "the substance of the allegation made by me in the above cited letters to you are already under investigation". If it is so, then it may be stated that decision to accord of sanction of prosecution may be determined only after the perusal of the evidence (oral or documentary) collected by the investigation agency, i.e., CBI and other materials to be provided to the competent authority."
>
> (viii) On 05.03.2010, the deponent prepared a note that an appropriate reply be sent to the appellant in the light of the advice given by the Law Department and final reply was sent to the appellant after respondent No.1 had approved note dated 17.03.2010."

8. The appellant filed rejoinder affidavit on 22.11.2010 along with a copy of letter dated 18.6.2009 written to him by respondent No. 2 in the context of representation dated 29.11.2008 submitted by him to respondent No.1.

9. Although, respondent No.2 resigned from the Council of Ministers on 14.11.2010, the appellant submitted that the issues relating to his right to file a complaint for prosecution of respondent No.2 and grant of sanction within the time specified in the judgment in Vineet Narain's case should be decided.

10. During the course of hearing, the learned Attorney General filed written submissions. After the hearing concluded, the learned Attorney General filed supplementary written submissions along with a compilation of 126 cases in which the sanction for prosecution is awaited for periods ranging from more than one year to few months

11. Final order in this case was deferred because it was felt that the directions given by this Court in Vineet Narain's case may require further elaboration in the light of the order passed in Civil Appeal No. 10660/2010 (arising out of SLP(C) No. 24873/2010) and the fact that decision on the question of grant of sanction under the 1988 Act and other statutes is pending for a sufficiently long time in 126 cases. However, as the investigation with regard to some of the facets of what has come to be termed as 2G case is yet to be completed, we have considered it appropriate to pass final order in the matter.

12. Appellant Dr. Subramanian Swamy argued that the embargo contained in Section 19(1) of the 1988 Act operates only against the taking of cognizance by the Court in respect of offences punishable under Sections 7, 10, 11, 13 and 15 committed by a public servant, but there is no bar to the filing of a private

complaint for prosecution of the concerned public servant and grant of sanction by the Competent Authority, and that respondent No. 1 was duty bound to take appropriate decision on his representation within the time specified in clause I(15) of the directions contained in paragraph 58 of Vineet Narain's case, more so because he had placed sufficient evidence to show that respondent No.2 had committed offences under the 1988 Act.

13. The learned Attorney General argued that the question of grant of sanction for prosecution of a public servant charged with any of the offences enumerated in Section 19(1) arises only at the stage when the Court decides to take cognizance and any request made prior to that is premature. He submitted that the embargo contained in Section 19(1) of the Act is applicable to the Court which is competent to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant and there is no provision for grant of sanction at a stage before the competent Court applies its mind to the issue of taking cognizance. Learned Attorney General relied upon the judgment of the Calcutta High Court in Superintendent and Remembrancer of Legal Affairs v. Abani Kumar Banerjee AIR 1950 Cal. 437 as also the judgments of this Court in R.R. Chari v.

State of Uttar Pradesh 1951 SCR 312, Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy (1976) 3 SCC 252, Ram Kumar v. State of Haryana (1987) 1 SCC 476, Krishna Pillai v. T.A. Rajendran, 1990 (Supp) SCC 121, State of West Bengal v. Mohd. Khalid (1995) 1 SCC 684, State through C.B.I. v. Raj Kumar Jain (1998) 6 SCC 551, K. Kalimuthu v. State (2005) 4 SCC 512, Centre for Public Interest Litigation v. Union of India (2005) 8 SCC 202 and State of Karnataka v. Pastor P. Raju (2006) 6 SCC 728 and argued that letter dated 29.11.2008 sent by the appellant for grant of sanction to prosecute respondent No.2 for the alleged offences under the 1988 Act was wholly misconceived and respondent No.1 did not commit any illegality or constitutional impropriety by not entertaining his prayer, more so because the appellant had himself asked for an investigation into the alleged illegal grant of licences at the behest of respondent No.2. Learned Attorney General further argued that the appellant does not have the *locus standi* to file a complaint for prosecuting respondent No.2 because the CBI is already investigating the allegations of irregularity committed in the grant of licences for 2G spectrum and the loss, if any, suffered by the Public Exchequer.

14. We have considered the respective submissions. Section 19 of the 1988 Act reads as under:

> "19. Previous sanction necessary for prosecution. – (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction, –
>
> (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
>
> (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;
>
> (c) in the case of any other person, of the authority competent to remove him from his office.
>
> (2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.
>
> (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-
>
> (a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-

section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation. – For the purposes of this section,

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

15. The question whether sanction for prosecution of respondent No.2 for the offences allegedly committed by him under the 1988 Act is required even after he resigned from the Council of Ministers, though he continues to be a Member of Parliament,

need not detain us because the same has already been answered by the Constitution Bench in R. S. Nayak v. A. R. Antulay (1984) 2 SCC 183 the relevant portions of which are extracted below:

> "Now if the public servant holds two offices and he is accused of having abused one and from which he is removed but continues to hold the other which is neither alleged to have been used (*sic* misused) nor abused, is a sanction of the authority competent to remove him from the office which is neither alleged or shown to have been abused or misused necessary? The submission is that if the harassment of the public servant by a frivolous prosecution and criminal waste of his time in law courts keeping him away from discharging public duty, are the objects underlying Section 6, the same would be defeated if it is held that the sanction of the latter authority is not necessary. The submission does not commend to us. We fail to see how the competent authority entitled to remove the public servant from an office which is neither alleged to have been used (*sic* misused) or abused would be able to decide whether the prosecution is frivolous or tendentious. An illustration was posed to the learned counsel that a minister who is indisputably a public servant greased his palms by abusing his office as minister, and then ceased to hold the office before the court was called upon to take cognizance of the offence against him and therefore, sanction as contemplated by Section 6 would not be necessary; but if after committing the offence and before the date of taking of cognizance of the offence, he was elected as a Municipal President in which capacity he was a public servant under the relevant municipal law, and was holding that office on the date on which court proceeded to take cognizance of the offence committed by him as a minister, would a sanction be necessary and that too of that authority competent to remove him from the office of the Municipal President. The answer was in affirmative. But the very illustration would show that such cannot be the law. Such an interpretation of

Section 6 would render it as a shield to an unscrupulous public servant. Someone interested in protecting may shift him from one office of public servant to another and thereby defeat the process of law. One can legitimately envisage a situation wherein a person may hold a dozen different offices, each one clothing him with the status of a public servant under Section 21 IPC and even if he has abused only one office for which either there is a valid sanction to prosecute him or he has ceased to hold that office by the time court was called upon to take cognizance, yet on this assumption, sanction of 11 different competent authorities each of which was entitled to remove him from 11 different public offices would be necessary before the court can take cognizance of the offence committed by such public servant, while abusing one office which he may have ceased to hold. Such an interpretation is contrary to all canons of construction and leads to an absurd end product which of necessity must be avoided. Legislation must at all costs be interpreted in such a way that it would not operate as a rogue's charter.

We would however, like to make it abundantly clear that if the two decisions purport to lay down that even if a public servant has ceased to hold that office as public servant which he is alleged to have abused or misused for corrupt motives, but on the date of taking cognizance of an offence alleged to have been committed by him as a public servant which he ceased to be and holds an entirely different public office which he is neither alleged to have misused or abused for corrupt motives, yet the sanction of authority competent to remove him from such latter office would be necessary before taking cognizance of the offence alleged to have been committed by the public servant while holding an office which he is alleged to have abused or misused and which he has ceased to hold, the decision in our opinion, do not lay down the correct law and cannot be accepted as making a correct interpretation of Section 6."

16. The same view has been taken in Habibullsa Khan v. State of Orissa (1995) 2 SCC 437 (para 12), State of H.P. v. M. P. Gupta (2004) 2 SCC 349 (paras 17 and 19), Parkash Singh Badal v. State of Punjab (2007) 1 SCC 1 and Balakrishnan Ravi Menon v. Union of India (2007) 1 SCC 45. In Balakrishnan Ravi Menon's case, it was argued that the observations made in para 25 of the judgment in Antulay's case are obiter. While negating this submission, the Court observed :

> "Hence, it is difficult to accept the contention raised by Mr. U.R. Lalit, the learned Senior Counsel for the petitioner that the aforesaid finding given by this Court in Antulay case is obiter.
>
> Further, under Section 19 of the PC Act, sanction is to be given by the Government or the authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed. The question of obtaining sanction would arise in a case where the offence has been committed by a public servant who is holding the office and by misusing or abusing the powers of the office, he has committed the offence. The word "office" repeatedly used in Section 19 would mean the "office" which the public servant misuses or abuses by corrupt motive for which he is to be prosecuted. Sub-sections (1) and (2) of Section 19 are as under:
>
> > "19. Previous sanction necessary for prosecution. —(1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—
> > (a) in the case of a person who is employed in connection with the affairs of the Union and is not

removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed."

Clauses (a) and (b) of sub-section (1) specifically provide that in case of a person who is employed and is not removable from his office by the Central Government or the State Government, as the case may be, sanction to prosecute is required to be obtained either from the Central Government or the State Government. The emphasis is on the words "who is employed" in connection with the affairs of the Union or the State Government. If he is not employed then Section 19 nowhere provides for obtaining such sanction. Further, under sub-section (2), the question of obtaining sanction is relatable to the time of holding the office when the offence was alleged to have been committed. In case where the person is not holding the said office as he might have retired, superannuated, be discharged or dismissed then the question of removing would not arise. Admittedly, when the alleged offence was committed, the petitioner was appointed by the Central Government. He demitted his office after completion of

> five years' tenure. Therefore, at the relevant time when the charge-sheet was filed, the petitioner was not holding the office of the Chairman of Goa Shipyard Ltd. Hence, there is no question of obtaining any previous sanction of the Central Government."
>
> (emphasis supplied)

17. The same view was reiterated in Parkash Singh Badal's case and the argument that even though some of the accused persons had ceased to be Ministers, they continued to be the Members of the Legislative Assembly and one of them was a Member of Parliament and as such cognizance could not be taken against them without prior sanction, was rejected.

18. The next question which requires consideration is whether the appellant has the *locus standi* to file a complaint for prosecution of respondent No.2 for the offences allegedly committed by him under the 1988 Act. There is no provision either in the 1988 Act or the Code of Criminal Procedure, 1973 (CrPC) which bars a citizen from filing a complaint for prosecution of a public servant who is alleged to have committed an offence. Therefore, the argument of the learned Attorney General that the appellant cannot file a complaint for prosecuting respondent No.2 merits rejection. A similar argument was negatived by the Constitution Bench in A.R. Antulay v. Ramdas Sriniwas Nayak

(1984) 2 SCC 500. The facts of that case show that on a private complaint filed by the respondent, the Special Judge took cognizance of the offences allegedly committed by the appellant. The latter objected to the jurisdiction of the Special Judge on two counts, including the one that the Court set up under Section 6 of the Criminal Law Amendment Act, 1952 (for short, 'the 1952 Act') was not competent to take cognizance of any of the offences enumerated in Section 6(1)(a) and (b) upon a private complaint. His objections were rejected by the Special Judge. The revision filed by the appellant was heard by the Division Bench of the High Court which ruled that a Special Judge is competent and is entitled to take cognizance of offences under Section 6(1)(a) and (b) on a private complaint of the facts constituting the offence. The High Court was of the opinion that a prior investigation under Section 5A of the Prevention of Corruption Act, 1947 (for short, 'the 1947 Act') by a police officer of the designated rank is not *sine qua non* for taking cognizance of an offence under Section 8(1) of the 1952 Act. Before the Supreme Court, the argument against the *locus standi* of the respondent was reiterated and it was submitted that Section 5A of the 1947 Act is mandatory and an investigation by the designated officer is a condition precedent to

the taking of cognizance by the Special Judge of an offence or offences committed by a public servant. While dealing with the issue relating to maintainability of a private complaint, the Constitution Bench observed:

> "It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Code of Criminal Procedure envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision. Numerous statutory provisions, can be referred to in support of this legal position such as (i) Section 187-A of Sea Customs Act, 1878 (ii) Section 97 of Gold Control Act, 1968 (iii) Section 6 of Import and Export Control Act, 1947 (iv) Section 271 and Section 279 of the Income Tax Act, 1961 (v) Section 61 of the Foreign Exchange Regulation Act, 1973, (vi) Section 621 of the Companies Act, 1956 and (vii) Section 77 of the Electricity Supply Act. This list is only illustrative and not exhaustive. While Section 190 of the Code of Criminal Procedure permits anyone to approach the Magistrate with a complaint, it does not prescribe any qualification the complainant is required to fulfil to be eligible to file a complaint. But where an eligibility criterion for a complainant is contemplated specific provisions have been made such as to be found in Sections 195 to 199 of the CrPC. These specific provisions clearly indicate that in the absence of any such statutory provision, a locus standi of a

> complainant is a concept foreign to criminal jurisprudence. In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force is not merely an offence committed relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait-jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception. To hold that such an exception exists that a private complaint for offences of corruption committed by public servant is not maintainable, the court would require an unambiguous statutory provision and a tangled web of argument for drawing a far fetched implication, cannot be a substitute for an express statutory provision."
>
> (emphasis supplied)

The Constitution Bench then considered whether the Special Judge can take cognizance only on the basis of a police report and answered the same in negative in the following words:

"In the matter of initiation of proceeding before a Special Judge under Section 8(1), the Legislature while conferring power to take cognizance had three opportunities to unambiguously state its mind whether the cognizance can be taken on a private complaint or not. The first one was an opportunity to provide in Section 8(1) itself by merely stating that the Special Judge may take cognizance of an offence on a police report submitted to it by an investigating officer conducting investigation as contemplated by Section 5-A. While providing for investigation by designated police officers of superior rank, the Legislature did not fetter the power of Special Judge to take cognizance in a manner otherwise than on police report. The second opportunity was when by Section 8(3) a status of a deemed public prosecutor was conferred on a private complainant if he chooses to conduct the prosecution. The Legislature being aware of a provision like the one contained in Section 225 of the CrPC, could have as well provided that in every trial before a Special Judge the prosecution shall be conducted by a Public Prosecutor, though that itself would not have been decisive of the matter. And the third opportunity was when the Legislature while prescribing the procedure prescribed for warrant cases to be followed by Special Judge did not exclude by a specific provision that the only procedure which the Special Judge can follow is the one prescribed for trial of warrant cases on a police report. The disinclination of the Legislature to so provide points to the contrary and no canon of construction permits the court to go in search of a hidden or implied limitation on the power of the Special Judge to take cognizance unfettered by such requirement of its being done on a police report alone. In our opinion, it is no answer to this fairly well-established legal position that for the last 32 years no case has come to the notice of the court in which cognizance was taken by a Special Judge on a private complaint for offences punishable under the 1947 Act."

(emphasis supplied)

The Court then referred to Section 5A of the 1947 Act, the provisions of the 1952 Act, the judgments in H.N. Rishbud and Inder Singh v. State of Delhi (1955) 1 SCR 1150, State of M.P. v. Mubarak Ali 1959 Supp. (2) SCR 201, Union of India v. Mahesh Chandra AIR 1957 M.B. 43 and held:

> "Having carefully examined these judgments in the light of the submissions made, the only conclusion that unquestionably emerges is that Section 5-A is a safeguard against investigation of offences committed by public servants, by petty or lower rank police officer. It has nothing to do directly or indirectly with the mode and method of taking cognizance of offences by the Court of Special Judge. It also follows as a necessary corollary that provision of Section 5-A is not a condition precedent to initiation of proceedings before the Special Judge who acquires power under Section 8(1) to take cognizance of offences enumerated in Section 6(1)(a) and (b), with this limitation alone that it shall not be upon commitment to him by the Magistrate.
>
> Once the contention on behalf of the appellant that investigation under Section 5-A is a condition precedent to the initiation of proceedings before a Special Judge and therefore cognizance of an offence cannot be taken except upon a police report, does not commend to us and has no foundation in law, it is unnecessary to refer to the long line of decisions commencing from Taylor v. Taylor; Nazir Ahmad v. King-Emperor and ending with Chettiam Veettil Ammad v. Taluk Land Board, laying down hitherto uncontroverted legal principle that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.
>
> Once Section 5-A is out of the way in the matter of taking cognizance of offences committed by public servants by a Special Judge, the power of the Special

Judge to take cognizance of such offences conferred by Section 8(1) with only one limitation, in any one of the known methods of taking cognizance of offences by courts of original jurisdiction remains undented. One such statutorily recognised well-known method of taking cognizance of offences by a court competent to take cognizance is upon receiving a complaint of facts which constitutes the offence. And Section 8(1) says that the Special Judge has the power to take cognizance of offences enumerated in Section 6(1)(a) and (b) and the only mode of taking cognizance excluded by the provision is upon commitment. It therefore, follows that the Special Judge can take cognizance of offences committed by public servants upon receiving a complaint of facts constituting such offences.

It was, however, submitted that even if it be held that the Special Judge is entitled to entertain a private complaint, no further steps can be taken by him without directing an investigation under Section 5-A so that the safeguard of Section 5-A is not whittled down. This is the selfsame argument under a different apparel. Accepting such a submission would tantamount to saying that on receipt of the complaint the Special Judge must direct an investigation under Section 5-A, There is no warrant for such an approach. Astounding as it appeared to us, in all solemnity it was submitted that investigation of an offence by a superior police officer affords a more solid safeguard compared to a court. Myopic as this is, it would topsy turvy the fundamental belief that to a person accused of an offence there is no better safeguard than a court. And this is constitutionally epitomised in Article 22 that upon arrest by police, the arrested person must be produced before the nearest Magistrate within twenty-four hours of the arrest. Further, numerous provisions of the Code of Criminal Procedure such as Section 161, Section 164, and Section 25 of the Indian Evidence Act would show the Legislature's hesitation in placing confidence on police officers away from court's gaze. And the very fact that power is conferred on a Presidency Magistrate or Magistrate of the first class to

> permit police officers of lower rank to investigate these offences would speak for the mind of the Legislature that the court is a more reliable safeguard than even superior police officers."
>
> (emphasis supplied)

19. In view of the aforesaid judgment of the Constitution Bench, it must be held that the appellant has the right to file a complaint for prosecution of respondent No.2 in respect of the offences allegedly committed by him under the 1988 Act.

20. The argument of the learned Attorney General that the question of granting sanction for prosecution of a public servant charged with an offence under the 1988 Act arises only at the stage of taking cognizance and not before that is neither supported by the plain language of the section nor the judicial precedents relied upon by him. Though, the term 'cognizance' has not been defined either in the 1988 Act or the CrPC, the same has acquired a definite meaning and connotation from various judicial precedents. In legal parlance cognizance is "taking judicial notice by the court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter judicially". In R. R. Chari v. State of U.P. (1951) SCR 312, the

three Judge Bench approved the following observations made by the Calcutta High Court in Superintendent and Remembrancer of Legal Affairs, West Bengal v. Abni Kumar Banerjee (supra):

> "What is taking cognizance has not been defined in the Criminal Procedure Code and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any magistrate has taken cognizance of any offence under section 190(1)(a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter - proceeding under section 200 and thereafter sending it for inquiry and report under section 202. When the magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g. ordering investigation under section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

21. In Mohd. Khalid's case, the Court referred to Section 190 of the CrPC and observed :

> "In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the

> Magistrate or the Judge. Cognizance is taken of cases and not of persons."

22. In Pastor P. Raju's case, this Court referred to the provisions of Chapter XIV and Sections 190 and 196 (1-A) of the CrPC and observed :

> "There is no bar against registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of investigation, as contemplated by Section 173 CrPC. If a criminal case is registered, investigation of the offence is done and the police submits a report as a result of such investigation before a Magistrate without the previous sanction of the Central Government or of the State Government or of the District Magistrate, there will be no violation of Section 196(1-A) CrPC and no illegality of any kind would be committed."

The Court then referred to some of the precedents including the judgment in Mohd. Khalid's case and observed :

> **"**It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out."

23. In Kalimuthu's case, the only question considered by this Court was whether in the absence of requisite sanction under Section 197 CrPC, the Special Judge for CBI cases, Chennai did not have the jurisdiction to take cognizance of the alleged offences. The High Court had taken the view that Section 197 was not applicable to the appellant's case. Affirming the view taken by the High Court, this Court observed :

> "The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage. Further, in cases where offences under the Act are concerned, the effect of Section 197, dealing with the question of prejudice has also to be noted."

24. In Raj Kumar Jain's case, this Court considered the question whether the CBI was required to obtain sanction from the prosecuting authority before approaching the Court for accepting the report under Section 173(2) of the CrPC. This question was considered in the backdrop of the fact that the CBI, which had investigated the case registered against the respondent under Section 5(2) read with Section 5(1)(e) of the 1947 Act found that the allegation made against the respondent could not be

substantiated. The Special Judge declined to accept the report submitted under Section 173(2) CrPC by observing that the CBI was required to place materials collected during investigation before the sanctioning authority and it was for the concerned authority to grant or refuse sanction. The Special Judge opined that only after the decision of the sanctioning authority, the CBI could submit the report under Section 173(2). The High Court dismissed the petition filed by the CBI and confirmed the order of the Special Judge. This Court referred to Section 6(1) of the 1947 Act and observed:

> "From a plain reading of the above section it is evidently clear that a court cannot take cognizance of the offences mentioned therein without sanction of the appropriate authority. In enacting the above section, the legislature thought of providing a reasonable protection to public servants in the discharge of their official functions so that they may perform their duties and obligations undeterred by vexatious and unnecessary prosecutions. Viewed in that context, the CBI was under no obligation to place the materials collected during investigation before the sanctioning authority, when they found that no case was made out against the respondent. To put it differently, if the CBI had found on investigation that a prima facie case was made out against the respondent to place him on trial and accordingly prepared a charge-sheet (challan) against him, then only the question of obtaining sanction of the authority under Section 6(1) of the Act would have arisen for without that the Court would not be competent to take cognizance of the charge-sheet. It must, therefore, be said that both the Special Judge and the High Court were patently wrong in observing

> that the CBI was required to obtain sanction from the prosecuting authority before approaching the Court for accepting the report under Section 173(2) CrPC."

25. In our view, the decisions relied upon by the learned Attorney General do not have any bearing on the moot question whether respondent No.1, being the Competent Authority to sanction prosecution of respondent No.2, was required to take appropriate decision in the light of the direction contained in Vineet Narain's case.

26. Before proceeding further, we would like to add that at the time of taking cognizance of the offence, the Court is required to consider the averments made in the complaint or the charge sheet filed under Section 173. It is not open for the Court to analyse the evidence produced at that stage and come to the conclusion that no *prima facie* case is made out for proceeding further in the matter. However, before issuing the process, it that it is open to the Court to record the evidence and on consideration of the averments made in the complaint and the evidence thus adduced, find out whether an offence has been made out. On finding that such an offence has been made out the Court may direct the issue of process to the respondent and take further steps in the matter.

If it is a charge-sheet filed under Section 173 CrPC, the facts stated by the prosecution in the charge-sheet, on the basis of the evidence collected during investigation, would disclose the offence for which cognizance would be taken by the Court. Thus, it is not the province of the Court at that stage to embark upon and shift the evidence to come to the conclusion whether or not an offence has been made out.

27. We may also observe that grant or refusal of sanction is not a quasi judicial function and the person for whose prosecution the sanction is sought is not required to be heard by the Competent Authority before it takes a decision in the matter. What is required to be seen by the Competent Authority is whether the facts placed before it which, in a given case, may include the material collected by the complainant or the investigating agency *prima facie* disclose commission of an offence by a public servant. If the Competent Authority is satisfied that the material placed before it is sufficient for prosecution of the public servant, then it is required to grant sanction. If the satisfaction of the Competent Authority is otherwise, then it can refuse sanction. In either case, the decision taken on the complaint made by a citizen is required

to be communicated to him and if he feels aggrieved by such decision, then he can avail appropriate legal remedy.

28. In Vineet Narain's case, the Court entertained the writ petitions filed in public interest for ensuring investigation into what came to be known as 'Hawala case'. The writ petition remained pending for almost four years. During that period, several interim orders were passed which are reported as Vineet Narain v. Union of India 1996 (1) SCALE (SP) 42, Vineet Narain v. Union of India (1996) 2 SCC 199, Vineet Narain v. Union of India (1997) 4 SCC 778 and Vineet Narain v. Union of India (1997) 5 SCALE 254. The final order was passed in Vineet Narain v. Union of India (1998) 1 SCC 226. In (1996) 2 SCC 199, the Court referred to the allegations made in the writ petition that Government agencies like the CBI and the revenue authorities have failed to perform their duties and legal obligations inasmuch as they did not investigate into the matters arising out of seizure of the so-called "Jain Diaries" in certain raids conducted by the CBI. The Court took note of the allegation that the arrest of some terrorists led to the discovery of financial support to them by clandestine and illegal means and a nexus between several important politicians, bureaucrats and criminals, who were

recipients of money from unlawful sources, and proceeded to observe:

> "The facts and circumstances of the present case do indicate that it is of utmost public importance that this matter is examined thoroughly by this Court to ensure that all government agencies, entrusted with the duty to discharge their functions and obligations in accordance with law, do so, bearing in mind constantly the concept of equality enshrined in the Constitution and the basic tenet of rule of law: "Be you ever so high, the law is above you." Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of that person, must be conducted and completed expeditiously. This is imperative to retain public confidence in the impartial working of the government agencies."

29. After examining various facets of the matter in detail, the three Judge Bench in its final order reported in (1998) 1 SCC 226 observed :

> "These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinising the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the

> duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law.
>
> The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. It also has adverse effect on foreign investment and funding from the International Monetary Fund and the World Bank who have warned that future aid to underdeveloped countries may be subject to the requisite steps being taken to eradicate corruption, which prevents international aid from reaching those for whom it is meant. Increasing corruption has led to investigative journalism which is of value to a free society. The need to highlight corruption in public life through the medium of public interest litigation invoking judicial review may be frequent in India but is not unknown in other countries: R. v. Secy. of State for Foreign and Commonwealth Affairs."

In paragraph 58 of the judgment, the Court gave several directions in relation to the CBI, the CVC and the Enforcement Directorate. In para 58 (I)(15), the Court gave the following direction:

> "Time-limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office."

30. The CVC, after taking note of the judgment of the Punjab and Haryana High Court in Jagjit Singh v. State of Punjab (1996) Crl. Law Journal 2962, State of Bihar v. P. P. Sharma 1991 Supp. 1 SCC 222, Superintendent of Police (CBI) v. Deepak Chowdhary,

(1995) 6 SC 225, framed guidelines which were circulated vide office order No.31/5/05 dated 12.5.2005. The relevant clauses of the guidelines are extracted below:

> "2(i) Grant of sanction is an administrative act. The purpose is to protect the public servant from harassment by frivolous or vexatious prosecution and not to shield the corrupt. The question of giving opportunity to the public servant at that stage does not arise. The sanctioning authority has only to see whether the facts would prima-facie constitutes the offence.
>
> (ii) The competent authority cannot embark upon an inquiry to judge the truth of the allegations on the basis of representation which may be filed by the accused person before the Sanctioning Authority, by asking the I.O. to offer his comments or to further investigate the matter in the light of representation made by the accused person or by otherwise holding a parallel investigation/enquiry by calling for the record/report of his department.
>
> (vii) However, if in any case, the Sanctioning Authority after consideration of the entire material placed before it, entertains any doubt on any point the competent authority may specify the doubt with sufficient particulars and may request the Authority who has sought sanction to clear the doubt. But that would be only to clear the doubt in order that the authority may apply its mind proper, and not for the purpose of considering the representations of the accused which may be filed while the matter is pending sanction.

> (viii) If the Sanctioning Authority seeks the comments of the IO while the matter is pending before it for sanction, it will almost be impossible for the Sanctioning Authority to adhere to the time limit allowed by the Supreme Court in Vineet Narain's case."

31. The aforementioned guidelines are in conformity with the law laid down by this Court that while considering the issue regarding grant or refusal of sanction, the only thing which the Competent Authority is required to see is whether the material placed by the complainant or the investigating agency *prima facie* discloses commission of an offence. The Competent Authority cannot undertake a detailed inquiry to decide whether or not the allegations made against the public servant are true.

32. In the light of the above discussion, we shall now consider whether the High Court was justified in refusing to entertain the writ petition filed by the appellant. In this context, it is apposite to observe that the High Court had proceeded under a wholly erroneous assumption that respondent No.1 had directed investigation by the CBI into the allegations of grave irregularities in the grant of licences. As a matter of fact, on receipt of representation dated 4.5.2009 that the grant of licences by respondent No.2 had resulted in huge loss to the Public

Exchequer, the CVC got conducted an inquiry under Section 8(d) of the Central Vigilance Commission Act, 2003 and forwarded a copy of the report to the Director, CBI for making an investigation into the matter to establish the criminal conspiracy in the allocation of 2G spectrum under the UASL policy of the DoT and to bring to book all the wrongdoers. Thereupon, the CBI registered FIR No.RC-DI-2009-A-0045 dated 21.10.2009 against unknown officials of the DoT, unknown private persons/companies and others for offences under Section 120-B IPC read with Sections 13(2) and 13(1)(d) of the 1988 Act. For the next about one year, the matter remained dormant and the CBI took steps for vigorous investigation only when this Court intervened in the matter. The material placed on record does not show that the CBI had registered a case or started investigation at the instance of respondent No.1.

33. On his part, the appellant had submitted representation to respondent No. 1 almost one year to the registration of the first information report by the CBI and highlighted the grave irregularities committed in the grant of licences resulting in the loss of thousands of crores of rupees to the Public Exchequer. He continuously pursued the matter by sending letters to respondent

No.1 at regular intervals. The affidavit filed by Shri V. Vidyawati, Director in the PMO shows that the matter was placed before respondent No.1 on 1.12.2008, who directed the concerned officer to examine and apprise him with the facts of the case. Surprisingly, instead of complying with the direction given by respondent No.1 the concerned officer sent the appellant's representation to the DoT which was headed by none other than respondent No.2 against whom the appellant had made serious allegations of irregularities in the grant of licences. It was natural for respondent No.2 to have seized this opportunity, and he promptly sent letter dated 18.6.2009 to the appellant justifying the grant of licences. The concerned officer in the PMO then referred the matter to the Ministry of Law and Justice for advice. It is not possible to appreciate that even though the appellant repeatedly wrote letters to respondent No.1 highlighting the seriousness of the allegations made in his first representation and the fact that he had already supplied the facts and documents which could be made basis for grant of sanction to prosecute respondent No.2 and also pointed out that as per the judgments of this Court, detailed inquiry was not required to be made into the allegations, the concerned officers in the PMO kept the matter

pending and then took the shelter of the fact that the CBI had registered the case and the investigation was pending. In our view, the officers in the PMO and the Ministry of Law and Justice, were duty bound to apprise respondent No.1 about seriousness of allegations made by the appellant and the judgments of this Court including the directions contained in paragraph 58(I) of the judgment in Vineet Narain's case as also the guidelines framed by the CVC so as to enable him to take appropriate decision in the matter. By the very nature of the office held by him, respondent No. 1 is not expected to personally look into the minute details of each and every case placed before him and has to depend on his advisers and other officers. Unfortunately, those who were expected to give proper advice to respondent No. 1 and place full facts and legal position before him failed to do so. We have no doubt that if respondent No.1 had been apprised of the true factual and legal position regarding the representation made by the appellant, he would have surely taken appropriate decision and would not have allowed the matter to linger for a period of more than one year.

34. In the result, the appeal is allowed. The impugned order is set aside. It is declared that the appellant had the right to file a

complaint for prosecuting respondent No.2. However, keeping in view the fact that the Court of Special Judge, CBI has already taken cognizance of the offences allegedly committed by respondent No.2 under the 1988 Act, we do not consider it necessary to give any other direction in the matter. At the same time, we deem it proper to observe that in future every Competent Authority shall take appropriate action on the representation made by a citizen for sanction of the prosecution of a public servant strictly in accordance with the direction contained in Vineet Narain v. Union of India (1998) 1 SCC 226 and the guidelines framed by the CVC.

.....J.
[G.S. Singhvi]

.....J.
[Asok Kumar Ganguly]

New Delhi,
January 31, 2012.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1193 OF 2012
(Arising out of SLP (C) No.27535/2010)

Dr. Subramanian Swamy ....Appellant(s)

- Versus -

Dr. Manmohan Singh & another ....Respondent(s)

J U D G M E N T

GANGULY, J.

1. After going through the judgment rendered by my learned brother G.S. Singhvi, J., I am in agreement with the various conclusions reached by His Lordship. However, I have added my own views on certain important facts of the questions raised in this case.

2. Brother Singhvi, J., has come to a finding that having regard to the very nature of the office held by respondent No.1, it may not be expected of respondent No.1 to personally look into the minute

details of each and every matter and the respondent No.1, having regard to the burden of his very onerous office, has to depend on the officers advising him. At the same time it may be noted that in the course of submission, the appellant, who argued in person, did not ever allege any malafide or lack of good faith against the respondent No.1. The delay which had taken place in the office of the respondent No.1 is unfortunate but it has not even been alleged by the appellant that there was any deliberate action on the part of the respondent No.1 in causing the delay. The position of respondent No.1 in our democratic polity seems to have been summed up in the words of Shakespeare "Uneasy lies the head that wears a crown" (Henry, The Fourth, Part 2 Act 3, scene 1).

3. I also agree with the conclusions of bother Singhvi, J., that the appellant has the locus to file the complaint for prosecution of the respondent No.2 in respect of the offences alleged to have been committed by him under the 1988 Act.

Therefore, I agree with the finding of brother Singhvi, J., that the argument of the learned Attorney General to the contrary cannot be accepted. Apart from that the learned Attorney General in the course of his submission proceeded on the basis that the question of sanction has to be considered with reference to Section 19 of the Prevention of Corruption Act (hereinafter "the P.C. Act") or with reference to Section 197 of the Code of Criminal Procedure, 1973 (hereinafter "the Code"), and the scheme of both the sections being similar (Vide paragraph 3 of the supplementary written submission filed by the learned Attorney General). In fact, the entire submission of the learned Attorney General is structured on the aforesaid assumption. I fail to appreciate the aforesaid argument as the same is contrary to the scheme of Section 19 of the P.C. Act and also Section 197 of the Code. In **Kalicharan Mahapatra** vs. **State of Orissa** reported in (1998) 6 SCC 411, this Court compared Section 19 of P.C. Act with Section 197 of the Code. After considering several

decisions on the point and also considering Section 6 of the old P.C. Act, 1947 which is almost identical with Section 19 of the P.C. Act, 1988 and also noting Law Commission's Report, this Court in paragraph 13 of **Kalicharan** (supra) came to the following conclusions:

> "13. The sanction contemplated in Section 197 of the Code concerns a public servant who "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", whereas the offences contemplated in the PC Act are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. Parliament must have desired to maintain the distinction and hence the wording in the corresponding provision in the former PC Act was materially imported in the new PC Act, 1988 without any change in spite of the change made in Section 197 of the Code."

4. The above passage in **Kalicharan** (supra) has been quoted with approval subsequently by this Court in **Lalu Prasad** vs. **State of Bihar** reported in 2007 (1) SCC 49 at paragraph 9, page 54. In paragraph 10, (page 54 of the report) this Court held in

Lalu Prasad (supra) that "Section 197 of the Code and Section 19 of the Act operate in conceptually different fields".

5. In view of such consistent view by this Court the basic submission of the learned Attorney General to the contrary is, with respect, untenable.

6. I also entirely agree with the conclusion of learned brother Singhvi, J., that the argument of the learned Attorney General that question for granting sanction for prosecution of a public servant charged with offences under the 1988 Act arises only at the stage of cognizance is also not acceptable.

7. In formulating this submission, the learned Attorney General substantially advanced two contentions. The first contention is that an order granting sanction is not required to be filed

along with a complaint in connection with a prosecution under Section 19 of the P.C. Act. The aforesaid submission is contrary to the settled law laid down by this Court in various judgments. Recently a unanimous three-judge Bench decision of this Court in the case of **State of Uttar Pradesh** vs. **Paras Nath Singh**, [(2009) 6 SCC 372], speaking through Justice Pasayat and construing the requirement of sanction, held that without sanction:

> *"……The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty."*
>
> (Para 6, page 375 of the report)

8. The other contention of the learned Attorney General is that in taking cognizance under the

P.C. Act the Court is guided by the provisions under Section 190 of the Code and in support of that contention the learned Attorney General relied on several judgments. However, the aforesaid submissions were made without noticing the judgment of this Court in the case of **Dilawar Singh** vs. **Parvinder Singh alias Iqbal Singh and Another** (2005) 12 SCC 709. Dealing with Section 19 of P.C. Act and Section 190 of the Code, this Court held in paragraph 8 at page 713 of the report as follows:

> "……The Prevention of Corruption Act is a special statute and as the preamble shows, this Act has been enacted to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. Here, the principle expressed in the maxim *generalia specialibus non derogant* would apply which means that if a special provision has been made on a certain matter, that matter is excluded from the general provisions. (See *Godde Venkateswara Rao* v. *Govt. of A.P.*, *State of Bihar* v. *Dr. Yogendra Singh* and *Maharashtra State Board of Secondary and Higher Secondary Education* v. *Paritosh Bhupeshkumar Sheth*.) Therefore, the provisions of Section 19 of the Act will have an overriding effect over the

general provisions contained in Section 190……”

9. Therefore, concurring with brother Singhvi, J., I am unable to uphold the submission of the learned Attorney General.

10. As I am of the humble opinion that the questions raised and argued in this case are of considerable constitutional and legal importance, I wish to add my own reasoning on the same.

11. Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist, secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes

development and undermines justice, liberty, equality, fraternity which are the core values in our preambular vision. Therefore, the duty of the Court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption. That is to say in a situation where two constructions are eminently reasonable, the Court has to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it.

12. Time and again this Court has expressed its dismay and shock at the ever growing tentacles of corruption in our society but even then situations have not improved much. [See **Sanjiv Kumar** v. **State of Haryana & ors.**, (2005) 5 SCC 517; **State of A.P.** v. **V. Vasudeva Rao,** (2004) 9 SCC 319; **Shobha Suresh Jumani** v. **Appellate Tribunal Forfeited Property & another**, (2001) 5 SCC 755; **State of M.P. & ors.** v. **Ram Singh**, (2000) 5 SCC 88; **J. Jayalalitha** v. **Union of India & another**, (1999) 5

SCC 138; **Major S.K. Kale** v. **State of Maharashtra,** (1977) 2 SCC 394.]

13. Learned Attorney General in the course of his submission fairly admitted before us that out of total 319 requests for sanction, in respect of 126 of such requests, sanction is awaited. Therefore, in more than 1/3rd cases of request for prosecution in corruption cases against public servants, sanctions have not been accorded. The aforesaid scenario raises very important constitutional issues as well as some questions relating to interpretation of such sanctioning provision and also the role that an independent judiciary has to play in maintaining rule of law and common man's faith in the justice delivering system.

14. Both rule of law and equality before law are cardinal questions in our Constitutional Laws as also in International law and in this context the role of the judiciary is very vital. In his famous

treatise on Administrative Law, Professor Wade while elaborating the concept of rule of law referred to the opinion of Lord Griffith's which runs as follows:

> "the judiciary accept a responsibility for the maintenance of the rule of law that embraces a willingness to oversee executive action and to refuse to countenance behaviour that threatens either basic human rights or the rule of law."
>
> [See R. v. Horseferry Road Magistrates' Court ex p. Bennett {1994) 1 AC 42 at 62]

15. I am in respectful agreement with the aforesaid principle.

16. In this connection we might remind ourselves that courts while maintaining rule of law must structure its jurisprudence on the famous formulation of Lord Coke where the learned Law Lord made a comparison between "the golden and straight metwand of law" as opposed to "the uncertain and crooked cord of discretion".

17. The right of private citizen to file a complaint against a corrupt public servant must be equated with his right to access the Court in order to set the criminal law in motion against a corrupt public official. This right of access, a Constitutional right should not be burdened with unreasonable fetters. When a private citizen approaches a court of law against a corrupt public servant who is highly placed, what is at stake is not only a vindication of personal grievance of that citizen but also the question of bringing orderliness in society and maintaining equal balance in the rule of law. It was pointed out by the Constitution Bench of this Court in **Sheonandan Paswan** vs. **State of Bihar and Others**, (1987) 1 SCC 288 at page 315:

> "……It is now settled law that a criminal proceeding is not a proceeding for vindication of a private grievance but it is a proceeding initiated for the purpose of punishment to the offender in the interest of the society. It is for maintaining stability and orderliness in

> the society that certain acts are constituted offences and the right is given to any citizen to set the machinery of the criminal law in motion for the purpose of bringing the offender to book. It is for this reason that in *A.R. Antulay* v. *R.S. Nayak* this Court pointed out that (SCC p. 509, para 6) "punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait jacket formula of locus standi……"

18. Keeping those principles in mind, as we must, if we look at Section 19 of the P.C. Act which bars a Court from taking cognizance of cases of corruption against a public servant under Sections 7, 10, 11, 13 and 15 of the Act, unless the Central or the State Government, as the case may be, has accorded sanction, virtually imposes fetters on private citizens and also on prosecutors from approaching Court against corrupt public servants. These protections are not available to other citizens. Public servants are treated as a special class of persons enjoying the

said protection so that they can perform their duties without fear and favour and without threats of malicious prosecution. However, the said protection against malicious prosecution which was extended in public interest cannot become a shield to protect corrupt officials. These provisions being exceptions to the equality provision of Article 14 are analogous to provisions of protective discrimination and these protections must be construed very narrowly. These procedural provisions relating to sanction must be construed in such a manner as to advance the causes of honesty and justice and good governance as opposed to escalation of corruption. Therefore, in every case where an application is made to an appropriate authority for grant of prosecution in connection with an offence under P.C. Act it is the bounden duty of such authority to apply its mind urgently to the situation and decide the issue without being influenced by any extraneous consideration. In doing so, the authority must make a conscious effort to ensure the rule of law

and cause of justice is advanced. In considering the question of granting or refusing such sanction, the authority is answerable to law and law alone. Therefore, the requirement to take the decision with a reasonable dispatch is of the essence in such a situation. Delay in granting sanction proposal thwarts a very valid social purpose, namely, the purpose of a speedy trial with the requirement to bring the culprit to book. Therefore, in this case the right of the sanctioning authority, while either sanctioning or refusing to grant sanction, is coupled with a duty. The sanctioning authority must bear in mind that what is at stake is the public confidence in the maintenance of rule of law which is fundamental in the administration of justice. Delay in granting such sanction has spoilt many valid prosecution and is adversely viewed in public mind that in the name of considering a prayer for sanction, a protection is given to a corrupt public official as a quid pro quo for services rendered by the public official in the

past or may be in the future and the sanctioning authority and the corrupt officials were or are partners in the same misdeeds. I may hasten to add that this may not be factual position in this but the general demoralizing effect of such a popular perception is profound and pernicious. By causing delay in considering the request for sanction, the sanctioning authority stultifies judicial scrutiny and determination of the allegations against corrupt official and thus the legitimacy of the judicial institutions is eroded. It, thus, deprives a citizen of his legitimate and fundamental right to get justice by setting the criminal law in motion and thereby frustrates his right to access judicial remedy which is a constitutionally protected right. In this connection, if we look at Section 19 of the P.C. Act, we find that no time limit is mentioned therein. This has virtually armed the sanctioning authority with unbridled power which has often resulted in protecting the guilty and perpetuating criminality and injustice in society.

19. There are instances where as a result of delayed grant of sanction prosecutions under the P.C. Act against a public servant has been quashed. See **Mahendra Lal Das** vs. **State of Bihar and Others**, (2002) 1 SCC 149, wherein this Court quashed the prosecution as the sanctioning authority granted sanction after 13 years. Similarly, in the case of **Santosh De** vs. **Archna Guha and Others**, (1994) Supp.3 SCC 735, this Court quashed prosecution in a case where grant of sanction was unduly delayed. There are several such cases. The aforesaid instances show a blatant subversion of the rule of law. Thus, in many cases public servants whose sanction proposals are pending before authorities for long periods of time are being allowed to escape criminal prosecution.

20. Article 14 must be construed as a guarantee against uncanalized and arbitrary power. Therefore, the absence of any time limit in

granting sanction in Section 19 of the P.C. Act is not in consonance with the requirement of the due process of law which has been read into our Constitution by the Constitution Bench decision of this Court in **Maneka Gandhi** vs. **Union of India and Another**, (1978) 1 SCC 248.

21. I may not be understood to have expressed any doubt about the constitutional validity of Section 19 of the P.C. Act, but in my judgment the power under Section 19 of the P.C. Act must be reasonably exercised. In my judgment the Parliament and the appropriate authority must consider restructuring Section 19 of the P.C. Act in such a manner as to make it consonant with reason, justice and fair play.

22. In my view, the Parliament should consider the Constitutional imperative of Article 14 enshrining the rule of law wherein 'due process of law' has been read into by introducing a time limit in

Section 19 of the P.C. Act 1988 for its working in a reasonable manner. The Parliament may, in my opinion, consider the following guidelines:

a) All proposals for sanction placed before any Sanctioning Authority, empowered to grant sanction for the prosecution of a public servant under section 19 of the P.C. Act must be decided within a period of three months of the receipt of the proposal by the concerned authority.

b) Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months mentioned in clause (a) above, an extension of one month period may be allowed, but the request for consultation is to be sent in writing within the three months mentioned in (a) above. A copy of the said request will be sent to the prosecuting agency or the private complainant to

intimate them about the extension of the time limit.

c) At the end of the extended period of time limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the chargesheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time limit.

23. With these additional reasons, as indicated, I agree with Brother Singhvi, J., and allow the appeal and the judgment of the High Court is set aside. No costs.

.....J.
(ASOK KUMAR GANGULY)

New Delhi

January 31, 2012