

## Dr. Subramanian Swamy Vs Director, CBI and Others

**Court:** Supreme Court of India

**Date of Decision:** Feb. 4, 2005

**Acts Referred:** Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 " Section 11(1), 12(3), 5(10)B  
Constitution of India, 1950 " Article 14  
Delhi Police Special Establishment Act, 1946 " Section 6A  
Financial Assets

**Citation:** (2005) 1 AWC 797 Supp : (2005) CriLJ 1413 : (2005) 2 JCR 273 : (2005) 2 JT 382 : (2005) 2 SCC 317 :  
(2005) SCC(L&S) 241

**Hon'ble Judges:** Y. K. Sabharwal, J; Tarun Chatterjee, J; D. M. Dharmadhikari, J

**Bench:** Full Bench

**Advocate:** Anil B. Divan and A.K. Panda, A.C., A.K. Sahu A.C., Kamini Jaiswal, Ranvir Singh and Saquid, in W.P. C No. 38/97, Prashant Bhushan, Vishal Gupta, Rohit K. Singh and Anubhav Anand, in W.P. C No. 21/200, for the Appellant; Goolam E. Vahanvati, Solicitor General, Public Prosecutor Malhotra, A.S.G., P. Parmeswaran, D.D. Kamath, Gaurav Agrawal and Shailendra Sharma, for the Respondent

**Final Decision:** Disposed Of

### Judgement

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Y.K. Sabharwal, J.

In these petitions challenge is to the constitutional validity of Section 6-A of the Delhi Special. Police Establishment

Act, 1946 (for short, "the Act"). This Section was inserted in the Act w.e.f. 12th September, 2003. It, inter alia, provides for obtaining the

previous approval of the Central Government for conduct of any inquiry or investigation for any offence alleged to have been committed under the.

Prevention of Corruption Act, 1988 where allegations relate to officers of the level of Joint Secretary and above. Before insertion of Section 6-A

in the Act, the requirement to obtain prior approval of the Central Government was contained in a directive known as "Single Directive" issued by

the Government. The Single Directive was a consolidated set of instructions issued to Central Bureau of investigation (CBI) by various

Ministries/Departments regarding modalities of initiating an inquiry or registering a case against certain categories of civil servants. The said

directive was stated to have been issued to protect decision making level officers from the threat and ignominy of malicious and vexatious

inquiries/investigations and to give protection to officers at the decision making level and to relieve them of the anxiety from the likelihood of

harassment for taking honest decisions. It was said that absence of such protection to them could adversely affect the efficiency and efficacy of

these institutions because of the tendency of such officers to avoid taking any decisions which could later lead to harassment by any malicious and

vexatious inquiries/investigations.

2. The Single Directive was quashed by this Court in a judgment delivered on 18th December, 1997 258997 . Within a few months after Vineet

Narain's judgment, by Central Vigilance Commission Ordinance, 1998 dated 25th August, 1998, Section 6-A was sought to be inserted

providing for the previous approval of the Central Vigilance Commission before investigation of the officers of the level of Joint Secretary and

above. On the intervention of this Court, this provision was deleted by issue of another Ordinance promulgated on 27th October, 1998. From the

date of the decision in Vineet Narain's case and till insertion of Section 6-A w.e.f. 12th September, 2003, there was no requirement of seeking

previous approval except for a period of two months from 25th August to 27th October, 1998.

3. The validity of Section 6-A has been questioned on the touchstone of Article 14 of the Constitution of India. Learned Amicus Curiae has

contended that the impugned provision is wholly subversive of independent investigation of culpable bureaucrats and strikes at the core of rule of

law as explained in Vineet Narain's case and principle of independent, unhampered, unbiased and efficient investigation. The contention is that

Vineet Narain's decision frames structure by which honest officers could fearlessly enforce the criminal law and detect corruption uninfluenced by

extraneous political, bureaucratic or other influences and the result of the impugned legislation is that the very group of persons, namely, high

ranking bureaucrats whose misdeeds and illegalities may have to be inquired into, would decide whether the CBI should even start an inquiry or

investigation against them or not. There will be no confidentiality and insulation of the investigating agency from political and bureaucratic control

and influence because the approval is to be taken from the Central Government which would involve leaks and disclosures at every stage. The very

nexus of the criminal-bureaucrat-politician which is subverting the whole polity would be involved in granting or refusing prior approval before an

inquiry or investigation can take place. Pointing out that the essence of a police investigation is skilful inquiry and collection of material and evidence

in a manner by which the potential culpable individuals are not forewarned, the submission made is that the prior sanction of same department

would result in indirectly putting to notice the officers to be investigated before commencement of investigation. Learned senior counsel contends

that it is wholly irrational and arbitrary to protect highly placed public servants from inquiry or investigation in the light of the conditions prevailing in

the country and the corruption at high places as reflected in several judgments of this Court including that of Vineet Narain"s. Section 6-A of the

Act is wholly arbitrary and unreasonable and is liable to be struck down being violative of Article 14 of the Constitution of India is the submission

of learned Amicus Curiae.

4. In support of the challenge to the constitutional validity of the impugned provision, besides observations made in the three-Judge Bench decision

in Vineet Narain"s case, reliance has also been placed on various decisions including 279715 , 259825 , 270189 , 270189 and 274056 to

emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In

Mardia Chemicals" case a three Judge Bench held Section 17(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of

Security Interest Act, 2002 to be unreasonable and arbitrary and violative of Article 14 of the Constitution of India, Section 17(2) provides for

condition of deposit of 75% of the amount before an appeal could be entertained. The condition has been held to be illusory and oppressive.

294561 , again a decision of a Three Judge Bench, setting aside the decision of the High Court which upheld the provisions of Sections 5(10)B,

11(1) and 12(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 pertaining to standard rent in petitions where the

constitutional validity of those provisions was challenged on the ground of the same being arbitrary, unreasonable and consequently ultra vires of

Article 14 of the Constitution, has come to the conclusion that the said provisions are arbitrary and unreasonable.

5. Learned Solicitor General, on the other hand, though very fairly admitting that the nexus between criminals and some elements of establishment

including politicians and various sections of bureaucracy has increased and also that there is a disturbing increase in the level of corruption and

these problems need to be addressed, infractions of the law need to be investigated, investigations have to be conducted quickly and effectively

without any interference and the investigative agencies should be allowed to function without any interference of any kind whatsoever and that they

have to be insulated from any extraneous influences of any kind, contends that a legislation cannot be struck down on the ground of arbitrariness or

unreasonableness as such a ground is available only to quash executive action and orders. Further contention is that even a delegated legislation

cannot be quashed on the ground of mere arbitrariness and even for quashing such a legislation, manifest arbitrariness is the requirement of law. In

support, reliance has been placed on observations made in a Three Judge Bench decision in 291972 that no enactment can be struck down by just

saying that it is arbitrary or unreasonable and observations made in 275404 that delegated legislation can be struck down only if there is manifest

arbitrariness.

6. In short, the moot question is whether arbitrariness and unreasonableness or manifest arbitrariness and unreasonableness, being facets of Article

14 of the Constitution of India are available or not as grounds to invalidate a legislation. Both counsel have placed reliance on observations made in

decisions rendered by Bench of three learned Judges.

7. Further contention of learned Solicitor General is that the conclusion drawn in Vineet Narain's case is erroneous that the Constitution Bench

decision in 269181 is not an authority for the proposition that in the case of high officials, requirement of prior permission/sanction from a higher

officer or Head of the Department is permissible, the submission is that conclusion reached in para 34 of Vineet Narain's decision run contrary to

observations and findings contained in para 28 of Veeraswami's case.

8. Having regard to the aforesaid, we are of the view that the matters deserve to be heard by a larger Bench, subject to the orders of Hon<sup>ble</sup> the

Chief Justice of India.