

Supreme Court of India

State Through Narcotics Control ... vs Kulwant Singh Intelligence ... on 11 February, 2003

Author: B Singh

Bench: N. Santosh Hedge, B.P. Singh

CASE NO. :

Appeal (crl.) 1139 of 2000

Appeal (crl.) 197 of 2003

PETITIONER:

State Through Narcotics Control Bureau
Sayed Abdul Ala

RESPONDENT:

Kulwant Singh
Intelligence Officer Narcotics Control Bureau

DATE OF JUDGMENT: 11/02/2003

BENCH:

N. SANTOSH HEDGE & B.P. SINGH

JUDGMENT:

J U D G M E N T (Arising Out of SLP (Crl.) No. 3816 of 2002) B.P. Singh, J.

Special Leave granted in S.L.P. (Crl.) No. 3816 of 2002.

In both these appeals common questions arise for consideration and hence they have been heard together and are being disposed of by this judgment and order.

Criminal Appeal No. 1139 of 2000 has been preferred by the State through the Narcotics Control Bureau and is directed against the judgment and order of the High Court of Delhi at New Delhi dated December 13, 2000 in Criminal Appeal No.248 of 1997. The High Court by its impugned judgment and order quashed the order of conviction and sentence of the respondent passed by the Additional Sessions Judge, Delhi, in Sessions Case No. 73 of 1996 dated 24th May, 1997 and acquitted the respondent of the charge levelled against him under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'). It was held that the complaint filed by an authorized officer of the Narcotics Control Bureau (hereinafter referred to as 'the NCB') was without authority of law inasmuch as the officers of the NCB could not be authorized to effect search, seizure and arrest under the Act, the NCB not being a department of the Government. Consequently all actions taken by them were illegal since the proceedings taken in respect of the offences under the Act were by officers not legally empowered to do so.

In Criminal Appeal arising out of SLP (Crl.) No.3816 of 2002 the High Court of Karnataka at Bangalore by its judgment and order dated 30th November, 2001 in Criminal Petition No.669 of 2001 negated a similar contention urged on behalf of the appellant in that appeal and held that the officers of the NCB could be and were duly empowered under the Act to conduct investigation

including the power of search, seizure and arrest. It held that the NCB was not a statutory authority and was indeed a department of the Government. Consequently its officers could be authorised under the Act to perform these functions. Accordingly the Criminal Petition filed by the appellant herein under Section 482 of the Code of Criminal Procedure for quashing the proceeding and the order framing charge was rejected.

In Criminal Appeal No.1139 of 2000 the respondent herein was apprehended by a team comprising of officers of the NCB and on search of his vehicle, after complying with necessary formalities under the Act, a polythene bag was recovered which contained brownish substance which was tested on the spot with the field testing kit and tested positive for heroin. The total quantity recovered was 0.980 Kg. The respondent was accordingly prosecuted in Sessions Case No.73 of 1996 and found guilty by the Additional Sessions Judge, Delhi, who sentenced him to rigorous imprisonment for 10 years and a fine of Rs. 1 lakh and in default of payment of fine, to undergo rigorous imprisonment for 6 months for the offence punishable under Section 21 of the Act. The High Court has not considered the case on merit by reference to the evidence on record since it found that the entire proceeding was illegal inasmuch as the search, seizure, recovery of offending articles and arrest of the respondent was done by the officers of the NCB who had no power to take such action and to prosecute the respondent.

Section 4 of the Act provides as follows :-

"4. Central Government to take measures for preventing and combating abuse of and illicit traffic in narcotic drugs, etc. (1) Subject to the provisions of the Act, the Central Government shall take all such measures as it deems necessary or expedient for the purpose of preventing and combating abuse of narcotic drugs and psychotropic substances and the illicit traffic therein.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the measures which the Central Government may take under the sub-section include measures with respect to all or any of the following matters, namely :-

(a) coordination of actions by various officers, State Governments and other authorities -

(i) under this Act, or

(ii) under any other law for the time being in force in connection with the enforcement of the provisions of this Act;

(b) obligations under the International Conventions;

(c) assistance to the concerned authorities in foreign countries and concerned international organizations with a view to facilitating coordination and universal action for prevention and suppression of illicit traffic in narcotic drugs and psychotropic substances;

(d) identification, treatment, education, after care, rehabilitation and social re-integration of addicts;

(e) such other matters as the Central government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act and preventing and combating the abuse of narcotic drugs and psychotropic substances and illicit traffic therein.

(3) The Central government may, if it considers it necessary or expedient so to do for the purpose of this Act, by order, published in the Official Gazette, constitute an authority or a hierarchy of authorities by such name or names as may be specified in the order for the purpose of exercising such of the powers and functions of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order, and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers and take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers and take such measures".

By Notification No. S.O. 96(E) dated 17th March, 1986 the Central Government through the Ministry of Finance (Department of Revenue) in exercise of powers conferred by sub-section (3) of Section 4 of the Act constituted an authority to be known as the "Narcotics Control Bureau" to exercise powers and functions of the Central Government in taking measures with respect to the following matters referred to in sub-section (2) of Section 4 :-

"(1) Co-ordination of actions by various officers, State Governments and other authorities under the principal Act, the Customs Act, 1962 (52 of 1962), the Drugs and Cosmetics Act, 1940 (23 of 1940) and by other law for the time being in force in connection with the enforcement of the provisions of the principal Act.

(2) Implementation of the obligations in respect of counter-measures against illicit traffic, under :-

(a) the Single Convention on Narcotic Drugs, 1961;

(b) the Protocol of 1972 amending the aforesaid Convention;

(c) the Convention on Psychotropic Substances, 1971; and

(d) any other international convention or protocol or other instrument amending an international convention relating to narcotic drugs or psychotropic substances which may be ratified or acceded to by India hereafter.

(3) Assistance to concerned authorities in foreign countries and concerned international organizations with a view to facilitating co-ordination and universal action for prevention and suppression of illicit traffic in narcotic drugs and psychotropic substances".

The Notification further provided that the NCB would have its Headquarters at New Delhi with five Zonal Offices at Bombay, Calcutta, Delhi, Madras and Varansai. It further provided that the Bureau shall be headed by a Director General who will be assisted at the Headquarters and in the Zonal Offices by such officers as may be appointed by the Central Government.

We may notice at this stage that clause (e) of sub-section (2) of Section 4 was not included in the Government's order notified on 17th March, 1986. Clause (e) of sub-section 2 of Section 4 is as follows :-

"(e) such other matters as the Central government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act and preventing and combating the abuse of narcotic drugs and psychotropic substances and illicit traffic therein."

The respondent contends that the non inclusion of the matters contained in the clause (e) of sub-section (2) of Section 4 is very material, and an argument was sought to be advanced before the High Court to which we shall advert later.

Under Section 36A offences under the Act are triable only by the Special Court constituted for the area in which the offence has been committed. Section 36A(1)(a) and (d) are relevant, and they read as under :-

"36A. Offences triable by Special Courts (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973

(a) all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government.

(b)

(c)

(d) a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act or upon a complaint made by an officer of the Central Government or a State Government authorized in this behalf, take cognizance of that offence without the accused being committed to it for trial."

Accordingly a Notification was issued by the Government of India, Ministry of Finance (Department of Revenue) dated 27th September, 1989 whereby in exercise of powers conferred by clause (d) of sub-section (1) of Section 36A of the Act the Central Government authorized the officers above the rank of Inspector in the Departments of Customs, Central Excise, Narcotics, Revenue Intelligence, Central Economic Intelligence Bureau and the Narcotics Control Bureau under the Ministry of Finance, Government of India, for filing of complaints relating to an offence under the Act before the Special Courts.

Under Section 41 of the Act a Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under Chapter IV, or for the search, whether by day or by night, of any building, conveyance etc. in which he has reason to believe any narcotic drug or psychotropic substance in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence is kept or concealed. Sub-section (2) of Section 41 provides as follows :-

"41. Power to issue warrant and authorization.

(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government or of the Border Security Force as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under Chapter IV or that any narcotic drug, or psychotropic substance in respect of which any offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence has been kept or concealed in any building, conveyance or place, may authorize any officer subordinate to him but superior in rank to a peon, sepoy or a constable, to arrest such a person or search a building, conveyance or place, whether by day or by night, or himself arrest a person or search a building, conveyance or place."

Section 42 which provides for power of entry, search, seizure and arrest without warrant or authorization is in similar terms and the officers who may be authorized must be any such officer (being an officer superior in rank to a peon, sepoy or constable) of the Departments of the Central Excise, Narcotics, Customs, Revenue Intelligence or any other department of the Central Government or of the Border Security Force as is empowered in this behalf by general or special order by the Central Government. Section 42(1) is reproduced below for ready reference :-

"42. Power of entry, search, seizure and arrest without warrant or authorization. (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government or of the Border Security Force as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing, that any narcotic drug, or psychotropic substance, in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence is kept or concealed in any building, conveyance or enclosed place, may, between sunrise and sunset

(a) enter into and search any such building, conveyance or place ;

(b) in case of resistance, break open any door and remove any obstacle to such entry ;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under Chapter IV relating to such drug or substance ; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under Chapter IV relating to such drug or substance :

Provided that if such officer has reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sun set and sun rise after recording the grounds of his belief."

Section 53 provides as follows :-

"Power to invest officers of certain departments with powers of an officer-in-charge of a police station - (1) The Central Government, after consultation with the State Government, may, by notification published in the Official Gazette, invest any officer of the department of central excise, narcotics, customs, revenue intelligence or Border Security Force or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of the offences under this Act.

(2) The State Government may, by notification published in the Official Gazette, invest any officer of the department of drugs control, revenue or excise or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of offences under this Act".

Section 67 of the Act provides that any officer referred to in Section 42, who is authorized in this behalf by the Central Government or the State Government may, during the course of any enquiry in connection with the contravention of any provision of the Act, call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of the Act or any rule or order made thereunder and may require any person to produce or deliver any document or thing useful or relevant to the enquiry or examine any person acquainted with the facts and circumstances of the case.

It is not in dispute that the Government of India through the Ministry of Finance (Department of Revenue) issued three Notifications, all on the 1st November, 1986, modifying the earlier Notifications issued by the Government of India on 14th November, 1985 by including therein the Narcotics Control Bureau so as to confer powers on the officers of the said Bureau above the rank of Inspector to exercise the powers and perform the duties specified in Sections 41(2), 42(1) 67 and

Section 53 of the Act. Thus there is no dispute factually that the Government of India has issued Notifications empowering the officers of the Narcotics Control Bureau above the rank of Inspector to exercise the powers under Sections 41(2), 42(1), 67 and 53 of the Act.

The case of the respondent is that these Notifications which purport to vest such powers in the officers of the NCB are invalid and illegal for the reason that the NCB being a creature of the statute, it cannot be termed as a department of the Government. The High Court has described the NCB as a "creature of the statute". Secondly, it has been urged before us as was urged before the High Court, that the NCB could only perform the functions enumerated in the notification constituting the NCB. Since these functions do not include the functions enumerated in Section 4(2)(e) of the Act, the power of the NCB to exercise those functions could not be enlarged by issuance of Notifications under Sections 41, 42, 53 or 67 of the Act as that would be violative of Section 4 of the Act under which the NCB was constituted.

At the threshold we may consider the legal status of the NCB. The Delhi High Court in its impugned judgment has described it as a "creature of the statute" meaning thereby that it is a "statutory authority". The High Court of Karnataka in its impugned judgment has taken the view that it is not a "statutory authority" since it is not created or constituted by the Act, but by the Central Government which has been vested with the discretion under the Act to constitute such an authority. Moreover, the NCB has no independent functional or autonomous existence.

Having regard to the provisions of the Act we are inclined to agree with the view of the Karnataka High Court. Section 4(1) of the Act does not create the Narcotics Control Bureau. It only authorizes the Central Government to take all such measures as it deems necessary or expedient for the purpose of preventing and combating abuse of narcotic drugs and psychotropic substances and the illicit traffic therein. Sub-section 2 of Section 4 enumerates only some of the measures which the Central Government may take. Sub-section 3 empowers and enables the Central Government in its discretion to constitute an authority or a hierarchy of authorities for taking measures with respect to such of the matters referred to in sub section 2, as may be mentioned in the order. The order constituting the authority is required to be published in the Official Gazette. It is therefore apparent on a mere perusal of Section 4 that the Act does not itself create an authority, but empowers the Central Government to do so in its discretion. The authority envisaged by the Section is constituted by the exercise of executive power by the Central Government which notifies its order constituting the authority by publishing the same in the Official Gazette enumerating the powers and functions to be exercised by it, subject to the supervision and control of the Central Government. Thus, the authority is not constituted by the Act, but is constituted by the Central Government by exercise of executive discretion vested in it by the Act. The NCB is therefore not an authority created or constituted by the Act, but an authority created under the Act.

Moreover, unlike statutory authorities created by an Act of the legislature, the NCB is not a body corporate having perpetual succession and a common seal, with power to acquire, hold and dispose of property and capable of suing or being sued. It is clearly not a distinct legal entity. The notified order constituting the NCB makes this abundantly clear by providing that the NCB shall be headed by a Director General who will be assisted at the Headquarters and in the Zonal Offices by such

officers as may be appointed by the Central Government from time to time. The powers and functions that it is authorized to exercise are such of the powers and functions of the Central Government which are enumerated in the order constituting it, and that too subject to the supervision and control of the Central Government.

The next question that arises for consideration is whether the NCB is a department of the Central Government. We have already noticed Sections 41 and 42, which enable the Central Government to empower officers of the departments named therein, or any other department of the Central government, to exercise the powers of entry, search, seizure and arrest under those provisions. Section 36A(1)(d) authorizes the Special Courts to take cognizance of offences under the Act on the basis of a police report or upon the complaint "made by an officer of the Central Government". The Delhi High Court has held that the NCB being the creature of a statute is not a department of the Government. The Karnataka High Court has taken the contrary view.

The word 'department' by its very nature, is not capable of a precise definition. Given its ordinary meaning in the context of governmental functions, it connotes a branch or division of government administration. For the sake of convenience the government work is divided subject wise or function wise, and each such division may be called a department. The word "department" is capable of a wider meaning as also a narrower meaning. The meaning of the word may differ having regard to the context in which it is used. Rule 2 of the Government of India (Allocation of Business) Rules provides "The business of the Government of India shall be transacted in the Ministries, Departments, Secretariats and Offices specified in the First Schedule to these rules (all which are hereinafter referred to as "departments")".

In the absence of any precise definition of the word 'department' it must be given its natural and ordinary meaning, unless the legal context in which the word is used requires a different meaning.

The office memorandum of the Government of India dated 2.2.87 clarified that the Director General, NCB, under the over all supervision of the Revenue Secretary will be responsible for devising and undertaking programmes for strengthening and modernizing the Narcotics Intelligence Agencies in the country. As earlier noticed, the Director General is assisted by such officers as may be appointed by the Central Government from time to time. The Director General, NCB has also been declared by the President as the Head of Department for the purpose of exercising financial powers in respect of NCB. It is also brought to our notice that the President of India in exercise of powers conferred by the proviso to Article 309 of the Constitution of India has framed the Department of Revenue (Narcotics Control Bureau) (Group C and Group D parts) Recruitment Rules 1992, and Department of Revenue Narcotics Central Bureau (Intelligence Officers) Recruitment Rules 1996. All this leads us to conclude that the NCB is merely a wing or branch of the Department of Revenue of the Government of India. As we have held earlier, it is not constituted as a distinct legal entity, and therefore has no independent existence, except as a branch or wing of the Department of Revenue dealing with matters entrusted to it by the notified order constituting it. Therefore, the notifications empowering the officers to exercise the powers under Sections 36A, 41, 42 and 67 must be held to be legal and valid. The search and seizure carried out by such officers and the arrests made by them in exercise of such power is authorized and warranted.

The complaint lodged by the empowered officer under Section 36A(1)(d) is also authorized. The view that we have taken is supported in principle by the decision of this Court in State of Punjab & others Vs. Raja Ram and others : (1981) 2 SCC 66.

We may at this stage deal with the submission which found favour with the High Court of Delhi, that the notification constituting the NCB having excluded the functions under Section 4(2)(e) of the Act, the power of NCB could not be enlarged by subordinate legislation by issuance of notification under the Act empowering officers of NCB to exercise the powers of entry, search, seizure and arrest. The submission is that these notifications vest in the officers of NCB authority to do that which the NCB under its charter cannot do.

The submission of course proceeds the basis that NCB is not a department of the Government of India. Once it is held, as we have held, that NCB is a wing or branch of the Department of Revenue, the submission must fail since the relevant provisions authorize the empowerment of officers of any department of the Government of India.

Even otherwise the submission has no force. The Notifications issued under Sections 36A, 41, 42 and 67 are not intended to enlarge the powers and jurisdiction conferred on the NCB by the notified order dated 17th March, 1986 constituting the NCB. If the Government intended to enlarge the powers or jurisdiction of NCB all that it had to do was to issue a similar Notification enlarging its powers and jurisdiction and notifying the same by publishing it in the official gazette. By the issuance of the aforesaid Notifications, the Government has only authorized a class of its officials in various departments of the Government including the Department of Revenue of which the NCB is a wing or branch to exercise powers under the aforesaid sections. A statutory duty has been cast on the Central Government to take all such measures as it deems necessary or expedient for the purpose of preventing and combating abuse of narcotic drugs and psychotropic substances and the illicit traffic therein. Obviously the Central Government must act in discharge of the legislative mandate effectively and to do so it must necessarily act through its officers. The provisions of the Act, as we have noticed earlier, authorized the Central Government to empower such officers to exercise powers under various provisions of the Act. Since the Act itself confers such an authority on the Central Government, no exception can be taken to the exercise of such authority. By so empowering its officers, the Central Government purports to effectively perform the obligations cast upon it by law. The mere fact that some of the officers of the NCB are also authorized to exercise such powers does not amount to enlarging the powers and jurisdiction of the NCB as conferred on it by the notified order of the Central Government dated 17th March, 1986.

This Court in Jasbir Singh vs. Vipin Kumar Jaggi and others : (2001) 8 SCC 289 expressed a similar view when it observed :-

"24. Under Section 4(1) of the Act, the Central Government is obliged to take all such measures as are deemed necessary for the purpose of preventing and combating the abuse of narcotic drugs and psychotropic substances and the illicit traffic therein. By Notification SO No. 96(E) dated 17-3-1985, the Central Government constituted the Narcotics Control Bureau (NCB) in exercise of its powers under Section 4(3) of the Act to discharge the powers and functions of the Central Government

under the Act subject to the superintendence and control of the Central Government.

25. It is, in the circumstances, clear that when cases are started on the complaint of NCB, it is not a mere complainant but is the executive and it must act in discharge of a mandate statutorily cast upon it to effectively check among other activities, the illegal dissemination and smuggling of drugs."

It was faintly submitted before us that under Section 53 of the Act the Central Government could not invest any officer of the Department of Revenue including the NCB with the powers of an Officer In-charge of the Police Station for investigation of the offences under the Act. It is not necessary for us to go into that question because in the instant case cognizance was taken on the basis of a complaint lodged by an empowered officer and not on the basis of a police report.

In the result we find that the judgment and order of the High Court of Delhi in Criminal Appeal No. 248 of 1997 is wholly unsustainable and deserves to be set aside. We accordingly allow Criminal Appeal No. 1139 of 2000, set aside the impugned judgment and order of the High Court of Delhi dated 13th December, 2000 and remit the matter to the High Court for its disposal on merits, in accordance with law.

In Criminal Appeal arising out of SLP (Crl.) No. 3816 of 2002 we find no merit and the same is accordingly dismissed.