
(2016) 11 GAU CK 0060
In the Gauhati High Court
Case No : P.I.L. No. 6 (K) of 2016

Nagaland Tribes Council (NTC)

APPELLANT

Vs

State of Nagaland

RESPONDENT

Date of Decision : 22-11-2016

Acts Referred:

Citation : (2016) 5 GauLT 612

Hon'ble Judges : Mr. L.S. Jamir, J.

Bench : Single Bench

Advocate : Mr. Taka Masa, Sr. Advocate Mr. Arenlong, Ms. Khrievono, Advocates, for the Petitioners; N. Mozhui, Advocate, for the Respondent No. 4; Mr. T.B. Jamir, Sr. Addl. Advocate General, Nagaland, for the State/Respondent Nos. 1 to 3

Final Decision : Allowed

Judgement

Mr. L.S. Jamir, J.(Oral) - The Nagaland State Vigilance Commission (SVC in short) was set up by resolution dated 9/4/1976 with the following jurisdiction and powers:

"2. The State Vigilance Commission will have jurisdiction and powers in respect of all matters enumerated below, namely:

(a) To undertake any enquiry into any transaction in which a public servant is suspected or alleged to have acted for improper or in a corrupt manner.

(b) To cause enquiry or investigations to be made on any complaint that a public servant has exercised or refrained from exercising his power for improper or corrupt purposes;

(c) To enquire into complaints of corruption, misconduct, lack of integrity or other kinds of malpractices or misdemeanours on the part of the public servants including members of the All India Services;

(d) To make recommendation as may be appropriate after enquiry or investigation to the Deptt. of the Government;

(e) To initiate at such intervals as it considers suitable review of procedure and practices of administration in so far as to maintain integrity in administration.

(f) To collect such statistics and other information as may be necessary.

(g) To submit an annual report to the Home Minister about its activities and that report shall be laid by the Home Minister before the State Assembly drawing particular attention to any recommendation made by it which had not been accepted or acted upon by disciplinary/administrative authorities."

By the same resolution the SVC was attached to the Home Department but for exercise of its powers and functions it was provided that it will not be subordinate to any Department and will have the same measure of independence and autonomy as the State Public Service Commission.

2. By a Notification dated 15/6/1976 and in exercise of powers conferred by the provisions of Section 2(s) of Criminal Procedure Code, 1973 (Cr.PC for short), the office of the Director of Vigilance was declared as Police Station w.e.f the date of issuance of the date of the notification. By another notification dated 9/12/1976, in exercise of powers conferred by Section 2(s) of the Cr.PC, the Director of Vigilance & Anti Corruption Nagaland was directed to be the Officer in-charge of the Police Station (Vigilance). Thereafter, the Secretary to the Government of Nagaland, Department of P &AR (Vigilance Branch) issued a memorandum dated 30/11/1979 on the jurisdiction and powers of the Vigilance Commission and submission of documents/records.

As the earlier notification declaring the office of the Director of Vigilance & Anti Corruption, Nagaland to be a Police Station did not provide for the provisions of the office under which the Police Station shall have jurisdiction and which invariably caused some confusion, the Home Department, Political Branch, Government of Nagaland issued a notification dated 21/8/1999 providing that the Director and officers of the Directorate of Vigilance & Anti-corruption shall be deemed to be Police Officers of the Vigilance Police Station and have jurisdiction and powers to investigate into the offence punishable under the following sections of law:

"1. All offences under the Preventive of Corruption Act, 1988.

2. Sections 406 to 409 IPC and 417 to 420 IPC.

3. Sections 471 to 477A IPC.

4. All offences under the official Secrets Acts, 1923.

5. All offences under the Assam Maintenance of Public Order Act, 1947.

6. Attempts, abetments and conspiracies of offences in item 4 to 5 above, by whosoever committed.

7. Any other particular offence or offences that may be specified by the State Government."

3. The Department of Justice & Law, Government of Nagaland by notification dated 4/9/1997 in exercise of powers conferred by Section 3(1) of the Preventive of Corruption Act, 1988 read with Rule 15 B of the Rules for Administration of Justice and Police in Nagaland, 1937 and notification dated 19/6/1975 issued by the Government of Nagaland appointed the Additional Deputy Commissioner (Judicial), Kohima as special Judge within the jurisdiction of Kohima district to try offences namely, (a) any offence punishable under the Prevention of Corruption Act 1988 and (b) any conspiracy to commit or any attempt to commit or abetment or any of the offences specified under the P.C. Act, 1988. The Tribunal for disciplinary proceeding in the Vigilance Commission Nagaland as the Special Judge within the jurisdiction of the Police Station of the Vigilance Commission was also appointed by notification dated 23/3/2007 issued by the Department of Justice & Law, Government of Nagaland.

4. The SVC was functioning in terms of the notifications and memorandum stated herein above. In the meantime, the Department of P & AR (Vigilance Branch) Government of Nagaland prepared a memorandum for the Cabinet on the subject of resolution to clarify powers and functions of the SVC. Thereafter, the impugned resolution dated 8/6/2016 was issued by the P & AR Department (Vigilance Branch) Government of Nagaland laying down additional provisions to the resolution dated 9/4/1976 pertaining to the establishment and functioning of the said SVC. The said resolution modified all previous, Resolution and Notifications concerning the SVC.

5. Being aggrieved, the present PIL has been filed by the Nagaland Tribes Council(NTC) as the petitioner No. 1 along with 2 other petitioners namely, petitioner No. 2 and 3 in their personal capacities.

6. Heard Mr. Taka Masa, learned senior counsel assisted by Mr. Arenlong, learned counsel appearing for the petitioners. Also heard Mr. T.B. Jamir, learned Sr. Addl. Advocate General, Nagaland for respondent Nos. 1, 2 and 3 and Mr.N. Mozhui, learned Standing counsel, Nagaland State Vigilance Commission/respondent No. 4.

7. Mr. Taka Masa learned senior counsel for the petitioners submit that prior to the formation of the State of Nagaland on 1/12/1963, there was only one enactment concerning the conduct of Government servants which was the Delhi Special Police Establishment Act, 1946 which was in force in the erstwhile Naga Hills Tuensang Area of both Kohima and Mokokchung districts by Assam Regulation No. XII of 1951 and vide Act 3 of 1951. The Prevention of Corruption Act 1947 (as amended in 1988) came into force in the Naga Hills Tuensang Area in the districts of Kohima and Mokokchung respectively vide Assam Government notification No. 1.19/47 GS dated 8/5/1947 and was subsequently in force in Tuensang district by the Act 3 of 1951. The SVC was established under the Government of Nagaland by resolution dated 9/4/1976 issued by the Deputy Secretary to the Government of Nagaland, Home Department. Therein, the jurisdiction and powers were provided and more particularly at clause (c) it is

provided that the SVC will have the power to enquire into the complaint of corruption, misconduct, lack of integrity and other kinds of malpractices or misdemeanours on the part of public servants including members of All India Services. Thereafter, by notification dated 15/6/1976 the office of the Director of Vigilance was declared as Police Station w.e.f. the date of the notification and by another notification dated 9/12/1976, the Director of Vigilance and Anti-corruption was directed to be the officer in charge of the Police Station (Vigilance). There were some confusions amongst various Departments/officers regarding the powers and functions of the Vigilance Commission and the submissions of various documents/records/information and therefore, the Government of Nagaland, Department of P &AR (Vigilance Branch) issued memorandum dated 30/11/1979 by which such confusions were cleared up. Further, by another notification dated 21/8/1999 issued by the Chief Secretary, Government of Nagaland, provided that the Director and Officers of the Directorate of Vigilance and Anti-corruption shall be deemed to be Police Officers of the Vigilance Police Stations. After setting up of the said SVC, the Department of Justice & Law by notification dated 4/9/1997, appointed the Additional Deputy Commissioner(Judicial) as Special Judge within the jurisdiction of Kohima district to try any offences under the P.C. Act, 1988 and any conspiracy to commit or any attempt to commit or abetment of any of the offences specified under the PC Act, 1988. The Tribunal for the disciplinary proceeding in Vigilance Commission Nagaland was appointed by notification dated 23/3/2007 as the special judge within the jurisdiction of the Police Station of the Vigilance Commission. The Special Judge has jurisdiction over any offences punishable under the PC Act, 1988 and any conspiracy to commit or any attempt to commit or abetment of any of the offences under the P.C. Act, 1988.

8. The learned senior counsel submits that the Police Station and Officer in charge of a Police Station are defined under Section 2(s) and Section 2(o) of the Code of Criminal Procedure,1973 (Cr.PC in short). He submits that Section 154 of the Cr.PC provides information of cognisable case and Section 155 of the Cr.PC provides for information as to non cognisable case and investigation of such case and Section 156 of the Cr.PC provides for Police Officers powers to investigate cognisable cases. The learned senior counsel also submits that the definition of public servant is provided under Section 21 Indian Penal Code (IPC in short) and under section 2(c) of the Prevention of Corruption Act,1988 (PC Act, 1988 in short).It is submitted that both under the IPC as well as the PC Act, there is no differentiation amongst public servants. He also submits that under the resolution of 9/4/1976, the SVC is empowered to enquire in the complaint of corruption, misconduct, lack of integrity or other kinds of malpractices and misdemeanours on the part of public servants including the members of All India Services. However, by the impugned resolution dated 8/6/2016, the term public servant has been narrowed down to mean only the employees of the State Government who are appointed under Article 309 of the Constitution of India and also the employees of the public corporation, statutory bodies and undertakings

of the State. The employees of the Central Government and the political executives have been removed from the meaning of public servants by the said impugned resolution. The learned senior counsel also submits that the powers of the SVC for commencing preliminary enquiry and further proceeding has been curtailed inasmuch as the same can be done only on receipt of complaint in written which is duly signed by the complainant and the suo moto powers of the SVC to investigate into the matters coming within its knowledge has been taken away. The impugned resolution dated 8/6/2016 further provides that prior to commencement of a preliminary enquiry into a complaint, the SVC should ascertain from the Chief Secretary that no parallel investigation of the similar complaint are being carried out by other investigating agency and if it comes to the notice of the Commission from the Chief Secretary that parallel proceeding have already been initiated, the Commission shall refrain from proceeding with the complaint but instead refer it to such investigating agency which are already seized with similar complaint. Further, responsibility has been cast on the Commission to provide information to the Chief Secretary in a sealed cover from the time of commencement of investigation into any complaint. He therefore submits that by the resolution dated 8/6/2016, the powers of SVC has been removed and basically it has been turned into a toothless organization. Further the higher hierarchy of Government servants which are mainly manned by IAS officers/Central Government employees are being taken away from the purview of investigation by the SVC. Similarly, the political executives as well as the abettors to such offence has also been completely taken away from the purview of SVC. This would clearly indicate that the only reason for issuing the resolution dated 8/6/2016 is to protect certain persons from the investigating powers of the SVC.

The learned senior counsel has also drawn the attention of this Court to paragraph 25 of the writ petition wherein, a categorical statement has been made that the resolution dated 8/6/2016 was not issued on the basis of any cabinet decision/resolution and therefore, the Chief Secretary who had issued the impugned resolution dated 8/6/2016 had issued the same without any source of power and without jurisdiction.

9. The learned senior counsel for the petitioners also submit that by the earlier resolution dated 9/4/1976, the SVC has the jurisdiction and powers to undertake any enquiry into any transactions in which a public servant is suspected or alleged to have acted for improper purpose or in a corrupt manner and that the SVC was also invested with the jurisdiction over the employees of All India Services. However, by the resolution dated 8/6/2016 the very term of public servant has been narrowed down only to the employees of the State Government appointed under Article 309 of the Constitution of India which is not permissible in law inasmuch as the Commission having already been notified to be a Police Station has the jurisdiction and powers as provided by the PC Act and the Cr.PC. Therefore, to give a different meaning to the term public servant by an executive decision is not tenable in law inasmuch as the same is against the statute

provided by law. It is submitted that there are no materials on record to even remotely suggest that the SVC had unduly harassed any Government servant or investigated frivolous and vicarious complaints. The jurisdiction of the SVC to investigate an offence is already provided under the notification dated 21/8/1999 and therefore, without modifying/superseding the said notification dated 21/8/1999, the Government could not have made the additional provisions as provided in the impugned resolution dated 8/6/2016.

The essence of Police investigation is skillful enquiry and collection of materials and evidence in a manner by which the potential culpable individual are not fore warned. However, the direction to ascertain from the Chief Secretary before commencing any preliminary enquiry into the complaint and also to submit information in a sealed cover to the Chief Secretary from the time of commencement of any complaint as required under the said resolution dated 8/6/2016 would indirectly be putting to notice to those officers to be investigated before the commencement of investigation. Further, if the SVC is not even allowed to verify complaints by a preliminary enquiry, the case would not be able to move any further. Again in cognisable offence, the SVC has suo moto powers to have a preliminary enquiry. However, if such powers is sought to be prevented, the same would mean to put a fetter to enable the SVC to gather relevant materials in a complaint in the State of Nagaland. Therefore, the arbitrary and illegal action of the respondents has made the SVC into a toothless tiger with no sufficient powers to investigate corruption of public servant and therefore, the impugned resolution dated 8/6/2016 should be quashed and set aside and the SVC should be allowed to function independently as provided by the resolution dated 9/4/1976. In his support, the learned senior counsel has placed reliance in the cases of:

1. Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others reported in (1978) 1SCC 405.
2. State by Police Inspector v. T. Venkatesh Murthy reported in (2004) 7SCC 766
3. P. Sirajuddin v. State of Madras reported in 1970(1) SCC 595
4. State of Haryana and others v. Bhajan Lal and others reported in 1992 Supp(1) SCC 335.
5. Vineet Narain and others v. Union of India and another reported in (1998) 1 SCC 226
6. P. Nallammal and another v. State represented by Inspector of Police reported in (1999) 6SCC 559.
7. In Re. v. State of Arunachal Pradesh and others reported in 2015 (4) GLT 165.
8. Vivek Gupta v. Central Bureau of Investigation and another reported in (2003) 8 SCC 628.
9. Subramanian Swamy v. Manmohan Singh and others reported in (2012) 3SCC

64.

10. Subramanian Swamy v. Director, Central Bureau of Investigation and another reported in (2014) 8SCC 682.

10. Per contra, Mr. T.B. Jamir, learned Sr. Addl. Advocate General, Nagaland submits that the SVC was set up by a resolution and not under any Act or Regulations. No parameters have been laid down for the SVC on its functional and jurisdictional powers. He submits that the impugned resolution dated 8/6/2016 is not intended to curtail the independence and autonomy of SVC and that the same was a policy decision of the Government for streamlining the functioning of the SVC. He also submits that the respondents in exercise of the powers conferred by the provisions of Section 2(s) of the Cr.PC, the Home Department, Political Branch Government of Nagaland by notification dated 15/6/1976 has declared the Directorate of Vigilance as Police Station and similarly by notification dated 9/12/1976, the Department of Law & Parliamentary Affairs, Government of Nagaland declared the Directorate of Vigilance & Anti-corruption to be officer in charge of the Police Station. He submits that Section 2(s) of the Cr.PC empowers the State Government to declare any post or place to be a Police Station and accordingly, notification has been issued to that effect. The power to issue notification includes the powers to add, amend, vary or rescind the notification and therefore, there is no legal infirmity in issuing the resolution dated 8/6/2016. It is submitted that the impugned resolution only lays down certain additional provisions and to that extent, the resolution modified all previous resolution and notification concerning the SVC and therefore, the question of contradiction does not arise. Referring to Section 1(2) Cr.PC, learned Sr. Addl. AG Nagaland submits that the respondents have the power to modify such provisions of the Cr. PC if found necessary. It is submitted that the petitioners have failed to show how they have a right to dictate the Government as to how the SVC should function. The powers and functions of the SVC was given by the Government and therefore, the respondents also have the authority to withdraw such powers as and when deemed fit. Therefore, he submits that there is no legal infirmity in the impugned resolution dated 8/6/2016 and therefore, there is no merit in the PIL and the same should be dismissed. In his support, learned Sr. Addl. AG has also placed reliance in the case of:

1. Mani Subrat Jain and others v. State of Haryana and others reported in (1977) 1SCC 486

2. N. Mani v. Sangeetha Theatre and others reported in (2004) 12 SCC 278

3. K.S. Krishnaswamy and others v. Union of India and another reported in (2006) 13 SCC 215

4. Census Commissioner and others v. R. Krishnamurthy reported in (2015) 2SCC 796.

11. Mr. N. Mozhui, learned Standing counsel for the State Vigilance Commission submits that the SVC is only a proforma respondent and therefore has nothing to comment in the matter.

12. I have heard the submissions forwarded by the learned counsel appearing for the parties.

13. For a proper appreciation of the case in hand, the impugned resolution dated 8/6/2016 is reproduced herein below:

"Government Of Nagaland

Personnel & Administrative Reforms Department (Vigilance Branch) Resolution

Dated Kohima the 8th June, 2016

No. PER/VIG/2/2/2016: : The Governor of Nagaland is pleased to lay down the following additional provisions to the Resolution No. Con-58/75 dated 9th April, 1976 pertaining to the establishment and functioning of the State Vigilance Commission.

1. For the purpose of exercise of the jurisdiction by the Nagaland State Vigilance Commission, the terms "public servant" will mean only the employee of the State Government appointed under article 309 of the Constitution of India and also the employees of the public corporations, statutory bodies and undertakings of the State.

2. The powers of the Nagaland State Vigilance Commission for commencing preliminary inquiry and further proceedings shall arise only upon receipt of a complaint in writing, duly signed by the complainant with his/her name and address or other particulars of identification, and not suo moto.

3. Before commencing a preliminary inquiry into a complaint, the Commission shall ascertain from the Chief Secretary that parallel investigation into a similar complaint are not being carried out by other investigating agencies, and if it comes to the notice of the Commission from the Chief Secretary that such parallel proceedings have already been initiated, the Commission shall refrain from proceeding with the complaint, but refer it to the other investigating agencies which are already seized with similar complaint, with a request for a periodic report on the matter, so that multiple investigations are obviated.

4. It shall be the responsibility of the Commission to provide in a sealed cover information to the Chief Secretary from the time of commencement of investigation into any complaint. This resolution modifies to the above extent all previous Resolution and Notifications concerning the State Vigilance Commission.

Sd/-

(Pankaj Kumar)

Chief Secretary to the Govt. of Nagaland."

14. Section 2(o) of the Cr.PC defines officer in charge of a police station as under:

"(o) "officer in charge of a police station" includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present;"

Section 2(s) of the Cr.PC defines the Police Station which read as under:

"(s) "police station" means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf;"

15. Section 21 IPC defines public servant as under:

".....

[Twelfth - Every person-

(a) In the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) In the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)"

Section 2(c) of the PC Act, 1988 defines public servant as under:-

"(c) "public servant" means,-

(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) any person in the service or pay of a local authority;

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to

prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

(ix) any person who is the president, secretary or other office-bearers of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

Explanation 1-Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2-Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation."

16. This Court has considered the resolution dated 9/4/1976 by which the SVC was set up. Therein, clause 2(c) provides that the SVC will have the jurisdiction and powers to enquire into the complaints of corruption, misconduct, lack of integrity or other kinds of malpractices or misdemeanours on the part of public servants including members of All India Services. The notification dated 21/8/1999 issued by the Home Department, Political Branch Government of Nagaland provides the jurisdiction and powers of the SVC to investigate into all offences under the PC Act, 1988, section 406, 409 IPC and 417-420 IPC, section 471-477 A IPC, all offences under the Official Secrets Act 1923, all offences under the Assam Maintenance of Public Order Act, 1947, Attempts, abetment and conspiracy of offence under the Official Secrets Act 1923 and the Assam Maintenance of Public Order Act, 1947 by whosoever committed and any other

particular offence or offences that may be specified by the State Government.

17. The impugned resolution dated 8/6/2016 at Clause-1 therein clearly indicates that the term of public servant has been scaled down to mean only the employees of the State Government appointed under Article 309 of the Constitution of India and the employees of public corporation/ statutory bodies and undertakings of the State. The same is contrary to the definition of public servants as provided under the IPC as well as the PC Act, 1988. The notification dated 15/6/1976 by which the SVC has been declared to be a Police Station is still in force till date. Further, the notification dated 9/12/1976 by which the Director of Vigilance & Anti-corruption Nagaland has been directed to be Officer in charge of the Police Station (Vigilance) is also in force till date. With the issuance of the notification dated 15/6/1976 and 9/12/1976, the SVC has been exercising its powers and jurisdiction as provided under the appropriate statute as enacted by the Parliament. Therefore, the State respondents could not have modified the meaning of public servant which runs contrary to the statute. Further, by resolution dated 8/6/2016 defining public servant to be meant only for the employees of the State Government appointed under Article 309 would clearly indicate that any malpractices or misappropriation or corruption made by the employees of Central Government, political executive and those abetting such offences are all kept outside the purview of the SVC. This would clearly indicate that the resolution dated 8/6/2016 has been passed with an ulterior motive to protect certain class of persons from the purview of the SVC. In the considered opinion of this Court, such action on the part of the respondents is not permissible in law.

18. The submissions of the Sr. Addl. Advocate General with regard to the resolution dated 8/6/2016 being a policy decision has been considered by this Court. The memorandum for the Cabinet dated 9/5/2016 has also been considered by this Court. From the materials available on record it is seen that the memorandum for the cabinet dated 9/5/2016 proceeded no further inasmuch as there was no cabinet decision on the said memorandum. The learned Sr. Addl. AG has failed to produce any documents or materials to indicate that the cabinet had considered the said memorandum dated 9/5/2016. It appears that the impugned resolution dated 8/6/2016 was issued by the Chief Secretary only by way of an executive decision. The SVC being already declared a Police station and the Director of Vigilance & Anti-corruption having been already directed to be officer in charge of Police Station (Vigilance) has been proceeding with their investigation in terms of the provisions laid down under the Cr.PC and the PC Act. To curtail or curb the functions of the SVC on the basis of an executive decision is not tenable in law and the executive cannot be allowed to tinker with the provisions of any statute passed by the Parliament.

19. In the case of B. Nallamal (supra), the Hon"ble Supreme Court has held as under:

"17. Thus, one of the objects of the new Act was to incorporate all the provisions

to make them more affective. Section 165-A of the Penal Code read like this:

"165-A. Punishment for abetment of offences defined in Section 161 or Section 165.-Whoever abets any punishable offence punishable under Section 161 or Section 165, whether or not that offence is committed in consequence of the abetment, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

18. Therefore, the legislative intent is manifest that abettors of all the different offences under Section 13(1)(e) of the PC Act should also be dealt with along with the public servant in the same trial held by the Special Judge."

20. Clause 2 of the impugned resolution dated 8/6/2016 provides for commencing preliminary enquiry and further proceeding shall arise only upon receipt of complaint in written duly signed by the complainant with his/her name and address and further, the suo moto power of the SVC has been taken away. Clause 3 again provides that before commencing preliminary enquiry, the Commission shall ascertain from the Chief Secretary that parallel investigation into a similar complaint are not being carried out by other investigation agency and if it comes to the notice of SVC from the Chief Secretary that such parallel investigation have already been initiated, the Commission shall refrain from proceeding with the complaint and instead refer it to the other investigating agency. Such a restrictions upon the SVC clearly indicate that there will be no confidentiality and that investigating agency will be subjected to political and bureaucratic control and influence because ascertaining from the Chief Secretary prior to commencing of preliminary enquiry as to whether there is parallel investigation and further providing information to the Chief Secretary in a sealed cover from the time of commencement of investigation into the complaint would involve leaks and disclosure at every stage. A general reading of the resolution dated 8/6/2016 also makes it clear that the Chief Secretary would decide whether or not the SVC should even start an enquiry or investigation against the corrupt officers.

21. In the case of Subramanian Swamy (supra), the Hon"ble Supreme Court has held as under:

"60. Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act,1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servant have to face very serious consequences. In the words of Mathew, J. in Shri Ambica Mills Lts (SCC p.675, paras 53-54)

"53. The equal protection of the laws is a pledge of the protection of equal laws. But laws may classify??

54. A reasonable classification is one which includes all who are similarly situated

and none who are not."

Mathew, J., while explaining the meaning of the words, "similarly situated stated that we must look beyond the classification to the purpose of the law. The purpose of law may be either the elimination of a public mischief or the achievement of some positive public good. The classification made in Section 6-A neither eliminates public mischief nor achieves some positive public good. On the other hand, it advances public mischief and protects the crimedoer. The provision thwarts an independent, unhampered, unbiased, efficient and fearless inquiry/ investigation to track down the corrupt public servants.

61. The essence of police investigation is skillful inquiry and collection of material and evidence in a manner by which the potential culpable individuals are not forewarned. The previous approval from the Government necessarily required under Section 6-A would result in indirectly putting to notice the officers to be investigated before the commencement of investigation. Moreover, if CBI is not even allowed to verify complaints by preliminary enquiry, how can the case move forward? A preliminary enquiry is intended to ascertain whether a prima facie case for investigation is made out or not. If CBI is prevented from holding a preliminary enquiry, at the very threshold, a fetter is put to enable CBI to gather relevant material. As a matter of fact, CBI is not able to collect the material even to move the Government for the purpose of obtaining previous approval from the Central Government."

22. Again in the case of Subramanian Swamy v. Man Mohan Singh and Ors., the Hon"ble Supreme Court has held as under:

"68 Today, corruption in our country not only poses a greave danger to the concept of constitutional governance, it also threatens the very foundation of the 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 ends. 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"

23. This Court has also considered the submissions of the learned Sr. Addl. AG that petitioners cannot dictate the State Government as to how to allow the SVC to function and that no legal right has accrued to the petitioners to file the present petition. In the considered opinion of the Court, the present being a PIL, the petitioners are espousing the interest of the public of Nagaland for a corruption free society and therefore, merely because the petitioners have no enforceable right cannot be a ground to reject the PIL. Further, a consideration of

the prayer made in the present PIL would clearly indicate that the challenge is made to the impugned resolution dated 8/6/2016 and also for a direction to allow the SVC to function as per the provisions provided under the appropriate statute and therefore, the submissions of the learned Sr. Addl. AG is rejected.

24. In the facts and circumstances of the case as discussed herein above, this Court is of the considered opinion that the petitioner has made out a case calling for interference of the resolution dated 8/6/2016. Accordingly, the impugned resolution dated 8/6/2016 is set aside and quashed. Any inquiry/investigation which have been closed by the SVC in terms of the resolution dated 8/6/2016 may be re-opened, if so advised.

25. The PIL is allowed.

26. No cost.