

A UNION OF INDIA AND ANR.
v.
SUNIL TRIPATHI ETC. ETC.
(Civil Appeal Nos. 5987-5989 of 2018)

B JULY 31, 2018
[DIPAK MISRA, CJI, A. M. KHANWILKAR AND
DR. D. Y. CHANDRACHUD, JJ.]

Investigation:

C *Preliminary enquiries conducted by CBI – Therein CBI reached the conclusion that it was not a fit case for the CBI to take over the investigation, and that investigation in the matters could be carried out with the State Police – In Writ petitions, High Court directed CBI to convert the preliminary enquiries into FIRs/RCs and to ensure that investigation was expeditiously completed – CBI's*
D *appeal challenging the direction – Held: High Court did not properly analyse the pleas of CBI as well as the pleas raised by the respondents – Therefore, the case is remitted to High Court to consider the contentious issues de novo – Appeals disposed of.*

E *State of West Bengal and Ors. v. Committee for Protection of Democratic Rights, West Bengal and Ors. (2010) 3 SCC 571 : [2010] 2 SCR 979 ; Manohar Lal Sharma v. Principal Secretary and Ors. (2014) 2 SCC 532 ; Subramanian Swamy v. Director, Central Bureau of Investigation and Anr. (2014) 8 SCC 682 : [2014] 6 SCR 873 – referred to.*

F Case Law Reference

[2010] 2 SCR 979	referred to	Para 3
(2014) 2 SCC 532	referred to	Para 3
[2014] 6 SCR 873	referred to	Para 3

G CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5987-5989 of 2018.

H From the Judgment and Order dated 20.07.2017 of the High Court of Delhi at New Delhi in Writ Petition (C) Nos. 12313 of 2015, 602 of 2017 and CM No. 2775 of 2017.

R. Balasubramaniam, Mullapudi Rambabu, Akshay Amritanshu, A
B. V. Balram Das, Ms. Aarti Sharma, Mukesh Kumar Maroria, Advs.
for the Appellants.

Abhimanue Shrestha, Adv. for the Respondent.

Caveator-in-person.

The Judgment of the Court was delivered by

A. M. KHANWILKAR, J. 1. By the impugned judgment and
order dated 20th July, 2017 passed by the High Court of Delhi at New
Delhi in Writ Petition (Civil) No.12313 of 2015, Writ Petition (Civil) No.602
of 2017 & C.M. No.2775 of 2017, the appellant No.2 Central Bureau of
Investigation (“CBI”) has been directed to take immediate steps to
convert preliminary enquiry (PE) No.2172014A0003 dated 7th May, 2014,
PE No.4(A) dated 8th May, 2014 and PE No. AC12014 A0006 dated
12th May, 2014 into FIRs/RCs and to ensure that investigation is
expeditiously completed and taken to its logical end in accordance with
law. In addition, consequential directions have been issued to the
appellant CBI.

2. The appellants have assailed the aforesaid decision on the ground
that such directions to the CBI are untenable in law and would require
the investigating agency to ignore its limits and functions and act beyond
the statutory dispensation. According to the appellants, the effect of the
directions given by the High Court is to call upon the CBI to act in a
particular manner *de hors* the material facts and the conclusion
recorded in the enquiry report. The thrust of the contention urged by the
appellants is that since the CBI, after conducting preliminary enquiry,
was of the *prima facie* opinion that there was no involvement of any
public servant or any loss to the public funds, it was not a fit case for the
CBI to take over the investigation and that the investigation thereof can
be conveniently carried out by the State police. In this context, a note
was submitted by the CBI to the concerned department to proceed with
the matter in accordance with law. It is urged by the appellants that the
High Court misdirected itself in relying upon the allegations adverted to
in the PE registered by the CBI pursuant to the orders passed by the
High Court on 8th January, 2014 in Writ Petition No.5578/2013 and
mistook it as the conclusion arrived at by the Inquiry Officer. If that
basis is discarded, then it would necessarily follow that the investigation

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A of the alleged offence can be conveniently done by the State police as it does not involve any instance of national or international ramifications as well. In substance, it is urged by the appellants that it was not a fit case for entrusting the investigation of the alleged crime to CBI and that the High Court decision has failed to analyse all the relevant aspects placed before it in that regard.

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3. The respondents, on the other hand, would contend that the appellants having failed to challenge the order dated 8th January, 2014 passed in Writ Petition No.5578/2013, cannot be heard to contend that CBI was not required to take over the investigation of the alleged crimes. In that, an unambiguous stand was taken by the appellants before the High Court in the said writ petition that the investigation of the alleged crimes referred to in the writ petition was already entrusted to the CBI and the investigation thereof was in progress. Notably, the CBI registered three separate P.Es. on 7th, 8th and 12th of May, 2014, reflective of the offence having been committed by unknown officials of the Directorate General of Resettlement (“DGR”) and Ex-Servicemen (ESM) and including relating to undue peculiar benefit to private firms and other persons mentioned in the accused list and corresponding loss to public exchequer and Government undertakings. In light of the allegations, preliminary enquiry in respect of each of these alleged offences came to be registered against the firms and other unknown persons mentioned in the PEs. The concerned official who undertook the preliminary enquiry eventually submitted notes which were reproduced in the Status Report dated 17th October, 2016 filed before the High Court, stating thus:

F “2. That in compliance of order dated 08.01.2014 the Respondent No.2 took up preliminary inquiry after receiving the writ petition from the Ministry of Defence through the Department of Ex-Servicemen Welfare.

G 3. It is also submitted that during the course of enquiry in all the three Preliminary Enquiries, the issues raised by the Petitioner in his writ petition were covered and inquired into by Respondent No.2/CBI. The Inquiry revealed the involvement of private persons in the matter of submission of false affidavits/information/documents to obtain ‘SECOND CAREER FACILITY’ through the Directorate General of Resettlement.

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4. During the course of inquiry, the Respondent CBI did not come across sufficient evidence to substantiate the involvement of public servants to bring the case under Prevention of Corruption Act. Since, inquiry did not establish the involvement of public servants, the Respondent No.2 sent Self Contained Notes to the authorities as mentioned below in relation to the preliminary inquiries as detailed below:-

i. PE2172014A0003/ACU-IV

Directorate General of Resettlement, Ministry of Defence, Government of India, with the request to refer the matters to the local police by the concerned Directorates in the matter of misrepresentation, forged affidavits and other issues in which forgery was revealed during enquiry and take necessary action as per the prevalent extant provisions of the department on the subject at the relevant point of time.

ii. PE AC-I2014A0006

Director General (Vigilance), Directorate General of Vigilance, Customs and Central Excise, Chanakayapuri, New Delhi for initiating necessary action as per the provision of Finance Act, 1994 against erring service providers on the instances of irregularities in deposit of service tax by service providers.

iii. PE 04(A)/2014/AC-III NEW DELHI

Chief Vigilance Officer, Employees Provident Fund Organization, Bhikaji Cama Place, New Delhi, Chief Vigilance Officer, Ministry of Defence and Chief Vigilance Officers of PSUs viz. National High Authority of India and Central Warehousing Corporation of India for taking appropriate action against the erring ESM companies for committing irregularities in depositing PF dues of Security Guards, who are employed by them in PSUs.

5. In this regard it is submitted that the short affidavit filed by CBI be kindly read as part of this status report.

6. It is further most respectfully submitted that the CBI shall abide any further direction(s) passed by this Hon'ble Court."

(emphasis supplied)

- A According to the respondents, it was not open to the appellants to act upon the aforementioned notes in view of the previous statement made before the High Court as recorded in the order dated 8th January, 2014, that the CBI has already commenced investigation into the alleged crimes. Furthermore, the stated notes implicitly conceded that there was enough material to suggest commission of cognizable offence. The fact that the official submitting stated notes was of the view that the offence was committed by persons other than public servants, would make no difference. As a matter of fact, the nature of allegations regarding misuse of official position and also causing loss to public exchequer, inevitably would involve role of public servants and officials. In either case, it was not open to CBI to resile from the statement made before the High Court on 8th January, 2014 and, therefore, the Court was justified in directing the CBI to investigate the alleged offence after registration of FIRs/RCs. The respondents would contend that no material was produced by the CBI before the High Court so as to completely rule out the involvement of public servant in the commission of the alleged offence. The respondents have also invited our attention to other criminal cases, which on being investigated by CBI, such as RC-19(S)/2013(R) under Section 120B read with Sections 420, 468 and 471 of IPC at PS CBI/ACB/Ranchi, RC-009/2016/A0011 dated 20th December, 2016 under Section 13(2), 13(1)(d) PC Act and Section 120B read with Section 420 IPC and FIR No.RC-028/2017/A0003 dated 31st January, 2017 under Section 120B and Section 120B read with Section 420 IPC. It is contended that the CBI had investigated these offences irrespective of the involvement of public servants. According to the respondents, the High Court was justified in directing the CBI to register FIRs/RCs and investigate the same and take it to its logical end. To buttress the arguments, the respondents have placed reliance on the decisions of this Court in *State of West Bengal and Ors. Vs. Committee for Protection of Democratic Rights, West Bengal and Ors.*,¹ *Manohar Lal Sharma Vs. Principal Secretary and Ors.*,² and *Subramanian Swamy Vs. Director, Central Bureau of Investigation and Anr.*³

4. We have heard Mr. R. Balasubramaniam, learned counsel appearing for the appellants and Mr. Abhimanue Shrestha, learned counsel appearing for the respondents.

¹(2010) 3 SCC 571

²(2014) 2 SCC 532

³(2014) 8 SCC 682

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5. After analysing the impugned judgment, it is noticed that the High Court allowed the writ petitions and issued directions mainly for the following reason:

“10. Given the nature of allegations made in para 9(H) of W.P.(C) No.12313/2015 and the observations of the CBI upon its preliminary examination as placed before this court in the affidavit dated 27th January, 2016, it cannot be denied that the present case meets the bar of ‘exceptional situations’ when it is essential to provide credibility and instill confidence in investigations. It also cannot be denied that the incident may have national and international ramifications. We are also of the view that grant of the prayer made by the writ petitioner is essential for doing complete justice and enforcing fundamental and basic rights of the ex-servicemen. Furthermore, ensuring benefits under a special scheme of the Government.”

6. As regards the allegations in paragraph 9(H) of Writ Petition (Civil) No.12313 of 2015, we find force in the plea taken by the appellants that the same is a virtual reproduction of the contents of the three PEs registered by the CBI, which were based on the allegations contained in the previous writ petition and other materials furnished to the CBI consequent to the order passed on 8th January, 2014. The appellants, in the Status Report as well as in the reply affidavit, had placed on record that after the enquiry undertaken consequent to registration of three PEs, it was revealed that there was no involvement of any public servant and loss to public exchequer nor the offences involved national and international ramifications necessitating investigation by the CBI. This contention has not been properly analysed by the High Court. The High Court, however, discarded the argument of the appellants in one paragraph, as can be discerned from paragraph 10 of the impugned judgment reproduced earlier. The High Court has also not dealt with the argument of the respondents that after the statement made by the appellants before the High Court on 8th January, 2014 that the CBI was investigating into the alleged offences and the investigation was in progress, it was not open to the appellants to take a different position. Moreso because material became available during the enquiry, suggesting commission of alleged offences. The respondents would

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A further contend that irrespective of the involvement of the public servant, the offences in question could be and ought to be investigated by the CBI in terms of the provisions of the Delhi Special Police Establishment Act, 1946 in light of the undertaking given before the High Court as recorded in the order dated 8th January, 2014.

B 7. Instead of examining all these contentious issues for the first time in these appeals, we deem it appropriate to set aside the impugned judgment and relegate the parties before the High Court for reconsideration of all aspects of the matter afresh on its own merits and in accordance with law. We may not be understood to have expressed any opinion, either way, on the issues that may require adjudication by
C the High Court.

8. Accordingly, these appeals are allowed. The impugned judgment and order is set aside and Writ Petition (Civil) No.12313 of 2015, Writ Petition (Civil) No.602 of 2017 and C.M. No.2775 of 2017 are restored to its original numbers on the file of the High Court of Delhi
D at New Delhi, for being decided *de novo* by the High Court, uninfluenced by any observations made in the impugned judgment. All questions are left open.

9. The appeals are disposed of in the aforementioned terms.
E No costs.

Kalpana K. Tripathy

Appeals disposed of.