

CASE NO.:
Writ Petition (civil) 13381 of 1984

PETITIONER:
M.C. Mehta

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 10/10/2007

BENCH:
S.B. Sinha, S.H. Kapadia & D.K. Jain

JUDGMENT:
J U D G M E N T
I.A. NO. 465 OF 2007
IN
WRIT PETITION (CIVIL) NO. 13381 OF 1984

S.B. SINHA, J :

1. Whether this Bench should consider the correctness of an order passed by the Governor of Uttar Pradesh refusing to grant sanction for prosecution of Ms. Mayawati and Shri Naseemuddin Siddiqui is the prime question involved in this application.

2. A public interest litigation was entertained by this Court in a writ application filed by the writ petitioner. This Court with a view to ensure proper maintenance of cultural heritage of India as also the ecology has been passing orders in the writ petition from time to time.

3. A project known as 'Taj Heritage Corridor Project' was initiated by the Government of Uttar Pradesh. One of the main purpose for which the same was undertaken was to divert the River Yamuna and to reclaim 75 acres of land between Agra Fort and the Taj Mahal and use the reclaimed land for constructing food plazas, shops and amusement activities. The said activities on the part of the Government of Uttar Pradesh was brought to the notice of this Court. An exception thereto was taken. A detailed inquiry was directed to be made by the Central Bureau of Investigation (CBI). Upon consideration of the report submitted before it by CBI, this Court in its order dated 18.09.2003 directed it to register a First Information Report and make further investigation in accordance with law. CBI investigated into the matter, including the roles played by Ms. Mayawati, the then Chief Minister, and Mr. Naseemuddin Siddiqui, the then Minister for Environment, Government of Uttar Pradesh. Investigations were also carried out against some officers.

CBI was later on asked to furnish a self-contained note as regards its findings against the erring officers and holders of public posts. A detailed report was submitted by it. A question arose as to what directions, if any, should be issued by this Court having regard to the conflict in opinions expressed by different authorities of CBI in regard to Ms. Mayawati and Mr. Naseemuddin Siddiqui.

The said question was considered by this Court in its judgment and order dated 27.11.2006 in M.C. Mehta (Taj Corridor Scam) v. Union of India and Others [(2007) 1 SCC 110].

4. Indisputably, the said order of this Court has been complied with. It now appears that the learned Special Judge directed CBI to obtain sanction of the Governor of Uttar Pradesh. By reason of an order dated 03.06.2007 the Governor of Uttar Pradesh has refused to accord the same.

5. Mr. Krishan Mahajan, learned Amicus Curiae, who has been assisting

this Court very ably in the matter, filed an application, inter alia, praying for :

\023In the light of the facts and circumstances mentioned above it is most humbly prayed that this Hon\022ble court may kindly be pleased to issue an appropriate writ, direction or order :

(i) Concerning the legal validity of the CBI seeking a sanction for the prosecution of Uttar Pradesh Chief Minister Ms. Mayawati and Minister Naseemuddin Siddiqui under Section 197 Cr. P.C. by calling for the records of the materials it placed before the Governor for seeking such sanction.

(ii) Directing the CBI to produce a copy of the June 3, 2007 sanction order of His Excellency the Governor of U.P. passed in connection with the case pending before the Special Judge/competent court based on FIR RC 0062003A0018.

(iii) Passing appropriate directions on the legal validity or otherwise of the June 3, 2007 order of His Excellency the U.P. Governor refusing under Section 197 (1) Cr. P.C. sanction for the prosecution of Chief Minister Ms. Mayawati and Minister Naseemuddin Siddiqui in relation to FIR RC 0062003A0018 registered against them by the CBI pursuant to the September 18, 2003 order of this Hon\022ble Court in I.A. 376 in CWP 13381/1984 and the investigation on which with the opinion of the CBI Superintendent of Police was directed by this Hon\022ble Court on Nov. 27, 2006 to be placed before the concerned court/Special Judge for deciding the matter in accordance with law.

(iv) Declaring that the sanction orders passed under Section 197(1) Cr. P.C. are in the public domain and hence cannot be classified as secret.\024

6. Mr. Mahajan, in support of the said application, would submit that the task of protection of cultural heritage having been undertaken by this Court and keeping in view the provisions of Article 49 of the Constitution of India, the Court should interfere in the matter and set aside the order of the Governor of Uttar Pradesh refusing to accord sanction to prosecute Ms. Mayawati and Mr. Naseemuddin Siddiqui, keeping in view the political scenario in the country, as CBI may not show any further interest in the matter at all.

It was urged that in a case of this nature, sanction in terms of Section 197 of the Code of Criminal Procedure is not imperative.

7. No doubt it is an unique case. In exercise of its jurisdiction under Article 32 of the Constitution of India and having regard to Article 49 and clause (g) of Article 51A of the Constitution of India, this Court while entertaining the public interest litigation at the instance of the writ petitioner had been taking all steps which have been thought necessary and proper in the matter. The question which, however, has arisen for our consideration is, should we undertake such an exercise. No doubt, a First Information Report has been lodged at the instance of this Court. Yet again this Court

thought it fit to issue requisite directions in its order dated 27.11.2006 directing the learned Special Judge to apply its mind on the materials collected during investigation by CBI and pass appropriate orders thereupon. This Court has been exercising its jurisdiction in public interest. It has been exercising its jurisdiction to issue a writ of continuous mandamus in the light of the decision of this Court in Vineet Narain and Others v. Union of India [(1998) 1 SCC 226].

8. We have no doubt in our mind that judiciary may step in where it finds the actions on the part of the Legislature or the Executive are illegal or unconstitutional but the same by itself would not mean that public interest litigation, in a case of this nature, should be converted into an adversarial litigation. The jurisdiction of the court to issue a writ of continuous mandamus is only to see that proper investigation is carried out. Once the court satisfies itself that a proper investigation has been carried out, it would not venture to take over the functions of the Magistrate or pass any order which would interfere with its judicial functions. Constitutional scheme of this country envisages dispute resolution mechanism by an independent and impartial tribunal. No authority, save and except a superior court in the hierarchy of judiciary, can issue any direction which otherwise take away the discretionary jurisdiction of any court of law. Once a final report has been filed in terms of sub-section (1) of Section 173 of the Code of Criminal Procedure, it is the Magistrate and Magistrate alone who can take appropriate decision in the matter one way or the other. If it errs while passing a judicial order, the same may be a subject matter of appeal or judicial review. There may a possibility of the prosecuting agencies not approaching the higher forum against an order passed by the learned Magistrate, but the same by itself would not confer a jurisdiction on this Court to step in. We should not entertain the application of the learned Amicus Curiae on such presupposition. A judicial order passed by a Magistrate may be right or wrong, but having regard to the hierarchy of the courts, the matter which would fall for consideration before the higher court should not be a subject matter of a decision of this bench. In an unlikely event of the interested parties in not questioning such orders before the higher forum, an independent public interest litigation may be filed. Instances are not unknown where this Court has entertained public interest litigation in cases involving similar question under Article 32 of the Constitution of India. [See Rajiv Ranjan Singh \021Lalan\022 VIII v. Union of India [(2006) 6 SCC 613].

9. It will not be out of place to mention that in Vineet Narain (supra), this Court categorically stated that unless a proper investigation is made followed by a proper prosecution under the general law applicable to such investigation, the rule of law will lose its significance. This Court in its order dated 27.11.2006 upon noticing Vineet Narain (supra) and Union of India v. Prakash P. Hinduja and Another [(2003) 6 SCC 195] held : \02326. Analysis of the above judgments shows that there is a clear-cut and well-demarcated sphere of activities in the field of crime detection and crime punishment. Investigation of an offence is the field reserved for the executive through the Police Department, the superintendence over which vests in the State Government. The executive is charged with a duty to keep vigilance over the law and order situation. It is obliged to prevent crime. If an offence is committed allegedly, it is the State\022s duty to investigate into the offence and bring the offender to book. Once it investigates through the Police Department and finds an offence having been committed, it is its duty to collect evidence for the purposes of proving the offence. Once that is completed, the investigating officer submits report to the court requesting the court to take cognizance of the offence under Section 190 CrPC and his duty comes to an end. Therefore, there are well-defined and well-demarcated functions in the field of crime detection and

their subsequent adjudication by the court. Lastly, the term 'investigation' under Section 173(2) of the Criminal Procedure Code includes opinion of the officer in charge of the police station as to whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to the court concerned or not. This opinion is not legal evidence. At the stage of Section 173(2) the question of interpretation of legal evidence does not arise. In any event, that function is that of the courts.

10. The parameters within which this Court should function in such matters are, therefore, well-defined.

11. It is one thing to say that this Court will not refrain from exercising its jurisdiction from issuing any direction for protection of cultural heritage and the ecology and environment; but then in discharge of the said duty, this Court should not take upon itself the task of determining the guilt or otherwise of an individual involved in the criminal proceeding. It should not embark upon an enquiry in regard to the allegations of criminal misconduct so as to form an opinion one way or the other so as to prima facie determine guilt of a person or otherwise. Any direction which could be issued, in our opinion, has already been issued by us on 27.11.2006, stating :

'2334. We, accordingly, direct CBI to place the evidence/material collected by the investigating team along with the report of the SP as required under Section 173(2) CrPC before the court/Special Judge concerned who will decide the matter in accordance with law. It is necessary to add that, in this case, we were concerned with ensuring proper and honest performance of duty by CBI and our above observations and reasons are confined only to that aspect of the case and they should not be understood as our opinion on the merits of accusation being investigated. We do not wish to express any opinion on the recommendations of the SP. It is made clear that none of the other opinions/recommendations including that of the Attorney General for India, CVC shall be forwarded to the court/Special Judge concerned.'

12. We do not think that we should go beyond the same.

13. We may observe that while entertaining a public interest litigation in a given case, this Court may exercise a jurisdiction to set aside the decision of a constitutional authority, but we are not concerned with such a situation. We, therefore, are of the view that we need not go further than what we have already said in our order dated 27.11.2006 to go into the correctness or otherwise of the order of the Governor. If no sanction of the Governor was required or if he has committed an error in passing the said order, the appropriate court, in our opinion, would be entitled to deal therewith, but not this Bench.

14. We, therefore, are of the opinion that this Bench should not entertain the application filed by the learned Amicus Curiae. The said application is dismissed with the aforesaid observations.