

CASE NO.:
Contempt Petition (civil) 448 of 2004

PETITIONER:
Sanjiv Kumar

RESPONDENT:
Om Prakash Chautala & Anr.

DATE OF JUDGMENT: 13/05/2005

BENCH:
CJI R.C. LAHOTI, D.M. DHARMADHIKARI & G.P. MATHUR

JUDGMENT:
J U D G M E N T

In
W.P.(Crl.) No.93/2003

WITH

T.C.(Crl.) No.7/2004

Sanjiv Kumar
Versus
Union of India & Ors.

\005. Petitioner

\005.Respondents

WITH

Criminal M.P. Nos. 2322/2005 & 13518/2004

In
W.P. (Crl.) No.93/2003

Sanjiv Kumar
Versus
State of Haryana & Ors.

\005. Petitioner

\005.Respondents

R.C. Lahoti, CJI

Writ Petition (Criminal) No.93 of 2003 was filed by Sanjiv Kumar, an IAS officer of the year 1985 complaining of large scale corruption and tampering of records in filling up of about 4000 vacancies of JBT teachers in the State of Haryana. Disposing of the writ petition, vide its order dated 25th November, 2003, this Court directed the complaint to be investigated by the CBI.

During the course of hearing of the writ petition, it was urged on behalf of the petitioner, Sanjiv Kumar that in order to build pressure on him, certain offences were registered and departmental proceedings initiated against him wherein he did not expect a fair investigation or inquiry so long as the matter was dealt with by the local officials. He reposed faith in CBI and submitted that whatever proceedings/investigation of criminal nature are pending against him could also be transferred to CBI. Accordingly, this Court directed not only the investigation into the offence, the commission whereof was complained by the petitioner, but also the investigations/proceedings pending against him to be transferred to CBI. The following five investigations/proceedings against the petitioner, Sanjiv Kumar were entrusted to CBI :

(1) F.I.R. No.312 dated 4.6.2002 under Section 406/409/468/471/477A/120 I.P.C. and 13(1)

(c) (d) Prevention of Corruption Act, lodged under Police Station, Sector 17, Chandigarh.

(2) Inquiry No.10 of 3.4.2001, Chandigarh, for alleged misuse of official vehicles and mobile phone by the petitioner, Sanjiv Kumar, leading to registration of criminal case under Section 13(1)(d) of Prevention of Corruption Act.

(3) Inquiry No.31 dated 10.8.2001, Chandigarh, regarding appointment of 36 officials under D.P.E.P. by the petitioner resulting in alleged financial loss of Rs.22,33,466 to the State Government.

(4) Inquiry No.38 dated 20.9.2001, Chandigarh, regarding financial irregularities committed by the petitioner in the projects of various items amounting to over Rs.56 lakhs.

(5) Inquiry No.16 dated 3.9.2002, Chandigarh, regarding disproportionate assets against the petitioner.

On 28th June, 2004 the petitioner filed CCP No.448 of 2004 complaining of violation of the order dated 25.11.2003 passed by this Court at the hands of the then Chief Minister and the Chief Secretary of the State of Haryana. It was submitted that certain departmental inquiry proceedings were initiated against the petitioner for the purpose of bringing pressure on him so that there could be no free investigation. Three departmental inquiry proceedings against the petitioner were brought to the notice of the Court which are as under :-

(i) Chargesheet dated 11.2.2002 for willful absence from duty.

(ii) Chargesheet dated 23.7.2002 for committing irregularities in making appointments while posted as Project Director, Haryana Prathamik Shiksha Pariyojana Parishad.

(iii) Chargesheet dated 18.2.2003 for non-adjustment of an advance of Rs.22,000/- taken by him from the Government.

The petitioner insisted that the proceedings may be entrusted to any authority other than the one under the State Government. He solicited an order of the Court for entrusting the proceedings to be held by the Central Vigilance Commission (for short the 'CVC'). The learned Solicitor General appeared for the CBI and the CVC and stated that the CVC was agreeable to have the proceedings entrusted to it so that they could be expeditiously and fairly conducted. The Court directed the abovesaid 3 departmental inquiry proceedings to be entrusted to the CVC in terms of the following directions:-

"It is directed that the 3 inquiries referred to hereinabove shall be entrusted to the C.V.C. who shall take up the proceedings from the stage at which they are. Before proceeding ahead, the C.V.C. shall examine if the inquiries have been properly and regularly held up to this stage. In case he feels it necessary to reopen the inquiries and hold afresh he shall be at liberty to do so. The

proceedings may be conducted by the C.V.C. himself or by a senior officer in his establishment to whom he may wish to entrust the inquiries."

On 23.8.2004, during the course of hearing and consequently in its order, the Court noted that there were in all 8 complaints pending with the State against the petitioner. Of these, 5 complaints were subject matter of inquiry/investigation by the CBI, the details whereof are mentioned in the order of this Court dated 25.11.2003 and there were 3 departmental inquiry proceedings, the details whereof are mentioned in the order of this Court dated 6.8.2004 and which had stood transferred to CVC in terms of the orders of this Court. There were no other departmental inquiries or criminal complaints pending against the petitioner.

The Court directed the Status Report to be called for.

On 22.9.2004 the petitioner, Sanjiv Kumar filed a writ petition in the High Court of Delhi impleading (i) Union of India, (ii) Department of Public Grievances, (iii) Director, CBI and (iv) Chief Vigilance Commissioner, as respondents. He complained of unfairness in the investigation and sought for the relief of the investigating officer, Shri Harbhajan Ram, SP, CBI being replaced by "a fresh team headed by officers of impeccable integrity and character working under the supervision and monitoring of the respondent no.4/CVC." This petition on the request of the parties was directed to be transferred to this Court. On 18.2.2005, CrI.M.P. No. 2322 of 2005 was filed in this Court wherein the petitioner sought for orders of this Court "constituting a Special Investigation Team (SIT) headed by a retired IPS Officer who would co-opt other serving officers of unimpeachable integrity under the supervision and monitoring of this Court in order to investigate the issues involved in the petition or in the alternative direct that a fresh team of Officers from the CBI to be constituted to investigate this case."

Status Reports of investigation have been filed from time to time. On 14.3.2005 we had taken up the matter in the Chamber for the purpose of ascertaining the progress of the cases under investigation with the CBI. Shri U.S. Misra, Director, CBI assisted by Ms. S. Sundari Nanda, DIG, CBI were present with all the relevant records. A summary of the investigation details prepared by the Director, CBI for the convenience of the Court was handed over which was directed to be placed in a sealed cover.

The learned ASG on 10th May, 2005 filed two charts of Status of Cases with the CBI and with the CVC which are as under :

STATUS OF CASES WITH CBI, RELATING TO SHRI SANJIV KUMAR, IAS

(REF. Order dated 25.11.2003 passed in Writ Petition (CrI.) No.93/2003)

SR.

NO.

Inquiry/FIR No.State
Vigilance/UT Police

Chandigarh
CBI Case No. and
Date of Registration
Present position

1.

Writ Petition (Crl.) No.93
of 2003 in the matter of
Shri Sanjiv Kumar Vs.
State of Haryana & others.
Allegation relating to
appointment of JBT
Teachers by Haryana
Govt. in the year 2000.
PE.I (A)/2003-ACU-
IX dated 12.12.2003
P.E. converted into
RC.3(A)/2004 \026 ACU-
IX on 24.5.2004. The
case is in the final
stage of investigation.
I.O. : R.N. Azad,
Additional Supdt. Of
Police

2.

FIR No.312 dated 4.6.2002
of PS Sector \026 17C,
Chandigarh relating to
alleged
irregularities/corruption in
printing of text books.
R.C.2(A)/2004-ACU-
IX dated 27.1.2004
In final stage of
investigation
I.O. : Sh. R. Singh,
Dy.Suptd. of Police

3.

Inquiry No.38 dated
20.9.2001 of State
Vigilance Bureau,
Haryana, relating to the
alleged irregularities
committed in purchase of
various items under DPEP.
PE.2(A)/2004-ACU-
IX dated 27.1.2004
On completion of the
Enquiry, the P.E. was
converted into
R.C.2(A)/2005-ACU-
IX on 17.2.2005. Case
is under investigation.
I.O. : Sh. M.K. Bhat
Additional Supdt. Of
Police

4.

Enquiry No.16 dated
3.9.2002 Chandigarh,
relating to alleged
possession of
disproportionate assets
PE.3(A)/2004-ACU-

IX dated 27.1.2004
On completion of
Enquiry, the P.E. was
converted into
RC.3(A)/2005-ACU-
IX on 17.2.2005. Case
is under investigation.
I.O. : Sh. M.K. Bhat,
Additional Supdt. Of
Police

5.

FIR No.293/2003 dated
30.6.2003 PS Sector \026
17C, Chandigarh registered
on the basis of Inquiry
No.10 of 3.4.2001,
Chandigarh, relating to
alleged misuse of official
vehicle and mobile phone.
R.C.1(A)/2004-ACU-
IX dated 27.1.2004

Since no material
warranting prosecution
was revealed during
investigation, Closure
Report was filed on
21.8.2004 in the Court
of Special Judge for
CBI Cases, Chandigarh
and is pending for
acceptance self
contained Note,
containing the result of
investigation, sent to
Chief Secretary, Govt.
of Haryana on
20.8.2004, for such
action as deemed fit.

6.

Inquiry No.31 dated
10.8.2001, Chandigarh,
relating to the alleged
irregularities committed in
the appointment of staff in
DPEP (District Primary
Education Project)
PE.1(A)/2004-ACU-
IX dated 27.1.2004
Enquiry completed and
SP's Report
recommending RDA
for major penalty sent
on 7.10.2004 to Chief
Secretary, Govt. of
Haryana and Central
Vigilance Commission.

Status of cases entrusted with the CVC

ANNEXURE

Sl.

No.

Charge

Sheet

dated

Gist of Allegations

Inquiry

Officer

Present Status

1

11.02.02

Willful absence from duty.

It is alleged that Shri Sanjeev Kumar on the expiry of EL granted to him from 22.05.2001 to 26.06.2001 did not join duty and thus over stayed his sanctioned leave & absented himself from 27.06.2001 till the issuance of C/S on 11.02.2002.

Shri Y.P.

Rai, CDI,

CVC.

Enquiry completed and report sent to Chief Secretary Haryana on 03.03.2005.

2

18.02.03

Non adjustment of advance of Rs.22,000/-. It is alleged that Shri S. Kumar was sanctioned an amount of Rs.22,000/- as TA for performing his duty as an Election Observer during the month of April-May 2001. Shri S.Kumar however failed to adjust the TA advance in contravention of rule 3(1) of All India Service Conduct Rules 1968.

Shri

Arvind

Kumar,

CDI, CVC.

Enquiry completed & Report submitted to Chief Secretary, Government of Haryana on 21.03.2005.

3

23.07.02

Irregularities in making appointments while posted as Project Director, Haryana Prathmik Shiksha Pariyojna Parishad. CBI also submitted SP's Report in PE No.1(A)/2004 of

CBI/ACU-IX dated
27.01.2004

In view of new facts
that emerged out of
CBI's Report the CVC
has filed a
Miscellaneous Petition
in the Hon'ble Supreme
Court, as stated by Shri
P.Parmeswaran,
Government Advocate,
Supreme Court of
India, praying therein
to direct the Govt. of
Haryana to modify/alter
the charged framed
against Shri Sanjeev
Kumar vide C/S dated
23.07.2002.

We have heard the learned counsel for the petitioner in the presence of the petitioner and the learned Additional Solicitor General. We have also perused the latest Status Report made available by the CBI. Having perused the Status Report as also the information which was made available to the Court by the Director and the DIG of CBI (reference: proceedings held on 14.3.2005), we are satisfied that the investigations into all the matters entrusted to the CBI whether on complaint made by the petitioner or on complaints made against him are proceeding satisfactorily. The petitioner had some grievance against Shri Harbhajan Ram, the then investigating officer of CBI. But it is pointed out that the said investigating officer has suffered some injury and the investigation has already been transferred and entrusted to some other officer. The Status Report and the information given by the officers of the CBI is to the effect that all the investigations related to this case are being handled with the requisite care and caution and inasmuch as the investigation is being held under the directions of this Court, an Officer of DIG rank is continuously monitoring the progress of the investigation conducted by different investigating officers and the Director of CBI is being apprised of the progress from time to time. This takes care of the grievance, if any, of the petitioner which was against the then investigating officer, Harbhajan Ram. Ex abundanti cautela we clarify that the present investigating officer who has replaced Shri Harbhajan Ram would review the investigation done by his predecessor and would conduct further investigation or carry out re-investigation if he feels the need for doing so after apprising his superior officers or if directed to do so by them.

We do not think the present case calls for a Special Investigation Team (SIT) being constituted and the investigation being taken away from the CBI and entrusted to any Special Investigation Team.

It may also be noted that political scenario in the State of Haryana has undergone a drastic change. During the pendency of these proceedings, elections have taken place in the State of Haryana. The then Chief Minister, against whom the petitioner had grievance has been voted out of power and a new Chief Minister and a new Government have come in power.

On considering the totality of the facts and circumstances of the cases, Contempt Petition (Civil) No. 448/2004, Criminal

M.P. Nos. 2322/2005, 13518/2004 in W.P.(Crl.) No.93/2003 and Transfer Case (Crl.) No. 7/2004 are disposed of in terms of the following directions :-

(1) The Departmental Inquiry proceedings against the petitioner shall be concluded by the CVC and proceeded to their logical end in accordance with law.

(2) In the matter of Department Inquiry relating to irregularities in making appointments while posted as Project Director, Haryana Prathmik Shiksha Pariyojana Parishad. (PE No.1(A)/2004 dated 27.1.2004), the CVC has sought for a direction to the Government of Haryana to modify or alter the charges framed against the petitioner, Sanjiv Kumar. The State Government shall be free to take decision on the communication received from the CVC in the matter of modification/alteration of the charges.

(3) On 21.2.2005 this Court had directed that the petitioner shall not be arrested and no proceedings against him shall be filed by the CBI except by the leave of the court. That order stands vacated. However, the petitioner shall not be arrested or called for interrogation except after apprising the Director, CBI. No harassment shall be caused to the petitioner and any action taken against the petitioner shall be promptly brought to the notice of the competent Court having jurisdiction over the case.

(4) We are not inclined to take cognizance and initiate any contempt proceedings on the petition filed by the petitioner in that regard.