

CASE NO.:
Writ Petition (crl.) 197-198 of 2004

PETITIONER:
Rajiv Ranjan Singh 'Lalan' & Anr.

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 21/08/2006

BENCH:
K.G. BALAKRISHNAN

JUDGMENT:
J U D G M E N T

K.G. Balakrishnan, J.

These writ petitions are filed as Public Interest Litigation by the two petitioners herein who were Members of the Parliament at the time of filing the petitions. Respondent nos. 4 and 5 were formerly Chief Ministers of the State of Bihar. It is alleged by the petitioners that they filed writ petitions before the High Court of Patna alleging large-scale defalcation of public funds and falsification of accounts involving hundreds of crores of rupees in the Department of Animal Husbandary in the State of Bihar and pursuant to these allegations, several cases were registered by the Police and investigation of these cases was later handed over to the Central Bureau of Investigation. In an earlier petition filed before this Court on 19.3.1996, this Court directed that the investigation shall be monitored by the Division Bench of the Patna High Court and in that Order, it was indicated that the CBI Officers entrusted with the investigation shall inform the Chief Justice of Patna High Court from time to time of the progress made in the investigation and if they needed any directions in the matter of conducting the investigation, obtain them from him and it was also said that the learned Chief Justice may either post the matter for directions before a Bench presided over by him or constitute any other appropriate Bench. It was also directed that the State Government shall co-operate in assigning adequate number of Special judges to deal with the cases expeditiously so that no evidence may be lost.

The petitioners allege that consequent upon change of the Government in the Centre, attempts have been made to delay and interfere with the judicial process. It is alleged that the public prosecutors who were handling the cases were removed and to protect the interests of respondent nos. 4 and 5, convenient prosecutor was appointed.

The respondent no. 5 is an accused in a case registered under the Prevention of Corruption Act, 1988. The case is filed pursuant to the FIR registered as no. R.C. 5[A] 498/AHD-Pat dated 19.8.1998. The allegation in that case is that respondent no. 5 as Chief Minister of Bihar between 1990 to 1996 had acquired assets disproportionate to his known sources of income. Chargesheet was filed in the Court of the Special Judge, CBI, Patna on 4.4.2000 under Section 13(1)(e) of the Prevention of the Corruption Act, 1988. Respondent no. 4 also was charge sheeted in the same case for abetment under Section 109 of the IPC read with Section 13(2) and Section 13(1)(e) of the Prevention of Corruption Act, 1988. This case has been re-numbered as Special Case No. 5/1998 and is pending trial in the Court of the Special Judge, CBI, Patna. The petitioners allege that certain income tax cases of respondent nos. 4 and 5 were pending before the

Income Tax Appellate Tribunal (ITAT) and one Mr. D.K. Tyagi who was a member of the ITAT had been hearing those cases and that respondent nos. 4 and 5 found it difficult to pursue the hearings before the said ITAT member and hence at their influence Mr. Tyagi was sent on deputation and he was replaced by one Mr. Mohanaranjan who was on the verge of retirement. It is further alleged that the new member alongwith another member heard these cases within two weeks and orders were pronounced in favour of respondent nos. 4 and 5. It is also alleged that respondent no. 3, namely, the Central Board of Direct Taxes did not prefer appeal in these cases though the decision went against the revenue. This, according to the petitioners, was to help respondent nos. 4 and 5 in the cases filed against them based on the allegation that they acquired assets disproportionate to their known sources of income.

The petitioners have also alleged that the Special Case No. 5/1998 pending before the Special Judge, CBI was at the final stage of hearing and that the Director, CBI, presumably under pressure from the accused changed the prosecutor and appointed one Shri Oma Shankar Singh who was only a retired Deputy Superintendent of Delhi Police and had no experience of conducting the prosecution. According to the prosecution, this was done at the fag end of the prosecution case to help the accused. The petitioners have made allegations against respondents 1 to 3 also that they were acting arbitrarily and interfering in the judicial process to benefit the respondent nos. 4 and 5. The petitioners have alleged that respondent nos. 4 and 5 obtained stay of proceedings of the case pending before the Special Judge from this Court suppressing some material facts. It is alleged that the respondent nos. 4 and 5 still wield influence and power and, therefore, this Court should monitor the trial of the case pending before the Special Judge, CBI, at Patna.

In these Writ Petitions, the petitioners have prayed mainly four reliefs. The first relief prayed is to issue an appropriate writ, order or direction monitoring the conduct of the trials relating to fodder scam cases proceedings against respondent nos. 4 and 5 in the States of Bihar & State of Jharkhand. The second prayer is to appoint the very same prosecutor who had been conducting prosecution earlier and to direct the High Court to see that no prosecutor or CBI Officer attached with the investigation and trial of the case should be removed, harassed or victimized for discharging their duties. The petitioners have also prayed that at least one inspector be provided for each fodder case. The petitioners have also prayed for cancellation of bail granted to respondent nos. 4 and 5. Petitioners have further prayed for a direction to respondents 1 to 3 to file an appeal against the orders passed by the ITAT.

During the pendency of these Writ Petitions, the Counsel for the petitioners alleged that the Special Judge who was trying the case involving respondent nos. 4 and 5, was being replaced by another Special Judge. The allegation was that one Shri Yogender Prasad was the CBI Special Judge and he was being replaced by one Shri Muni Lal Paswan and this according to the petitioners was deliberately done to help the respondent nos. 4 and 5. In view of the allegations made by the petitioners, this Court on 1.8.2005 directed the Registrar General of the Patna High Court to send details and files as to when Judge Shri Yogender Prasad was promoted as a District Judge and all papers regarding posting of the subsequent officer Shri Muni Lal Paswan. As regards the posting of Shri Muni Lal Paswan as a Special Judge, this Court again passed an Order on 26.10.2005 and the Registrar of the High Court was directed to give further clarification in the matter. The Registrar General of the High Court of Patna appeared in person before us and filed an affidavit giving out the details leading to the decision of the Standing Committee of the High Court to post Shri Muni Lal Paswan as a

Special Judge, CBI case Patna.

In view of the allegations made by the petitioners in respect of the cases pending before the ITAT, the President of the ITAT was directed to send all papers pertaining to the constitution of the Bench of Shri P. Mohanarajan and Shri M.K. Sarkar which disposed of the various appeals pending before the ITAT. The President of the ITAT has submitted a report and also produced relevant papers before us.

In view of the allegation made by the petitioners regarding the appointment of a new prosecutor in place of earlier prosecutor, this Court directed the 3rd respondent to produce the entire files including the notations pertaining to the appointment of Shri Oma Shankar Sharma as Prosecutor.

Refuting the allegations contained in the Writ Petition, detailed counter-affidavits have been filed by the respondents. In the joint counter-affidavit of respondent nos. 4 and 5, they have alleged that the writ petitions contain vague and indefinite allegations and they are made with political motive to satisfy their personal grudge and that this is an abuse of the process of the Court. The respondents have alleged that the Public Interest Litigation shall not be used for private or political motives or for other consideration. It is also alleged that Special Case no. 5/98 pending before the Special Judge is a case registered under Sections 13(2) and 13(1) of the Prevention of Corruption Act and it has nothing to do with the 'fodder scam' case. The various allegations made in the Writ Petitions have been denied specifically.

We heard the learned Senior Counsel Shri Mukul Rohtagi for the petitioner and Solicitor General appearing for respondents 1 to 3 and also the learned counsel for respondent nos. 4 and 5. At the time of the arguments, the learned Counsel for the petitioners submitted that the petitioners in the present facts and circumstances of the case only pray for appointment of an appropriate prosecutor to conduct the case pending before the Special Judge and that the bail of the respondent nos. 4 and 5 be cancelled and Respondent no. 3 be directed to file appeals against the orders passed by the ITAT. The petitioners also submitted arguments to the effect that the appointment of the present Special Judge was not done properly. No specific prayer was made by the petitioners to change the Presiding Officer. They, however, submitted a request that High Court may be directed to reconsider the appointment and posting of Shri Muni Lal Paswan as a Special Judge.

We shall first consider the prayer of the petitioners as to whether any irregularities have been committed in the matter of disposal of cases against respondent nos. 4 and 5 by the Income Tax Appellate Tribunal, Patna. The petitioners have alleged that Shri D.K. Tyagi, who had been hearing the cases of respondent nos. 4 and 5 and proving to be difficult during the course of the hearing, was curiously sent on deputation and was replaced by Shri Mohanarajan, who was on the verge of the retirement, to head the Tribunal. It is further alleged that Shri Mohanarajan picked up only two cases pertaining to respondent nos. 4 and 5 even though the matter had been heard fully by another bench, and within two weeks, the cases were heard and allowed in favour of the assessee namely respondent nos. 4 and 5, and that he had no background of the case and had not disposed of any other matter. The petitioners alleged that after the disposal of these cases by the Tribunal, steps were not taken to file appeal against these orders and that was done at the instance of respondent nos. 4 and 5.

The entire allegations made by the petitioners are denied. The President of the Income Tax Appellate Tribunal submitted a report

regarding the manner in which income tax cases of respondent nos. 4 and 5 were disposed of by the Tribunal. The President has stated that he took over as the President of ITAT on 31.10.2003 and at that time a petition filed by Respondent no. 5 for transfer of cases from Patna to Delhi was pending. The Department after considering the legal aspects declined to transfer the cases of respondent no. 5 to Delhi. It was suggested and noted on the files "it may perhaps be worthwhile to consider constituting a Special Bench for early disposal of these appeals". Shri D.K. Tyagi sent a representation on 12.1.2004 praying that he may be transferred to Delhi as his mother was 80 years old and with deteriorating health and that he was anxious to arrange marriage of his daughter and his son was studying at Delhi. There were some other developments also as Shri D.K. Tyagi had left India without permission and a show-cause notice was issued to him. He filed an explanation and came over to Delhi to personally explain the things and he was allowed to remain at Delhi for some period and the President of the ITAT, with a view to inculcate judicial discipline, decorum and proper behaviour from the Bench, made Shri Tyagi to sit in Delhi Bench of the ITAT alongwith the seniormost Accountant Member. There were also other circumstances whereby Shri. Tyagi wanted his transfer from Patna to avoid recurrence of another incident in view of the repeated confrontations with the Bar. It was under these circumstances Shri Mohanarajan was directed to camp at Patna in June, 2004. Another member Shri Aggarwal also expressed his inability to camp at Patna. Shri P. Mohanarajan alongwith Shri M.K. Sarkar who was a senior member of the Tribunal, dealt with the cases of respondent nos. 4 and 5. The President has also refuted an allegation that Shri Sarkar was selected to camp at Delhi only for a short period to dispose of this case. He has brought to our notice that the Bench disposed of 11 appeals of respondent no. 5 and several other cases and that 136 cases were disposed of during that period and the list of such cases and details are given at Annexure I.

As regards non-filing of the appeals against the order passed by ITAT, the Chief Commissioner of Income Tax-VIII in New Delhi had filed affidavit wherein it is stated that the question was referred to the Central Board of Direct Taxes for consideration and he had sought opinion from the Ministry of Law. The Central Board of Direct Taxes and the Ministry of Finance obtained the opinion of the Ministry of Law to the effect that no substantial questions of law arose out of the judgments of the ITAT in the cases of respondent nos. 4 and 5 for filing appeals before the High Court and thus instructions were issued not to appeal against these cases.

The allegations made by the petitioners that there were serious irregularities in disposing of the cases of respondent nos. 4 and 5 are not factually correct. The very foundation of the allegation is that Shri Tyagi, member of the Appellate Tribunal was transferred from Patna to Delhi at a time when he was hearing appeals is factually incorrect. It is also not correct to say that appeals were disposed of by the member of the Tribunal who was on the verge of retirement. The petitioners could not point out any procedural irregularity in the manner in which these appeals were disposed of. After going through the affidavits and reports and various other papers, we are satisfied that the allegations made by the petitioners are not true. The petitioners have prayed that this Court should direct the authorities to file appeal against the orders passed by ITAT in the cases of respondent nos. 4 and 5. In a collateral proceedings like this, the petitioner cannot seek any remedy of Writ of Mandamus directing the authorities to file appeals against such orders. An appeal is a statutory remedy available to the Department and the third party like Writ Petitioner cannot seek such remedies in collateral proceedings like this. Moreover, the petitioners could not point out anything to show that there were serious procedural irregularities on

the part of the Department in not filing the appeal. The Department had taken opinion of the Central Board of Direct Taxes as well as the Ministry of Finance and the Ministry of Finance had sought the opinion of the Ministry of Law. The petitioners have not made any specific allegation that these decisions were taken at the behest of respondent nos. 4 and 5 or any undue influence was exerted to take such decisions. The allegations made by the petitioners are vague and indefinite. Therefore, the prayer for Writ of Mandamus to direct the respondent nos. 1 to 3 to file an appeal against the ITAT orders cannot be allowed and is liable to be rejected.

The next prayer of the petitioners is that the Special Judge who is dealing with the CBI cases at Patna was not properly appointed by the High Court of Patna and another Judge who was dealing with this case was suddenly transferred to help respondent nos. 4 and 5. It may be noticed, at the outset, that no such allegations have been made in the original Writ Petition. The petitioners filed IA as Criminal Miscellaneous Petition nos. 6589-6590 of 2005 wherein certain allegations have been made. Subsequent to this filing of these interim petitions, the original writ petition was not amended and no prayer was incorporated in the relief portion as to whether the present Special Judge is to be removed or not. In the interlocutory application as Criminal Miscellaneous Petition nos. 6589-6590 of 2005, the petitioners alleged that taking undue advantage of the ongoing summer vacations, in an attempt to over reach the orders passed by this Hon'ble Court which was already seized of the matter in its entirety, the Patna High Court on the administrative side, has directed the transfer of the Special Judge(AHD), Patna. Such act according to the petitioners amounts to contempt of this Hon'ble Court and the petitioners reserved their right to initiate appropriate proceedings for contempt against the persons responsible for the same. The petitioners sought for stay of the transfer of the then Special Judge Shri Yogender Prasad. This Court on 1.8.2005 passed the following order:

"At the request of the learned counsel appearing for the parties, the petitions are fixed for hearing on 20th September, 2005.

In the meantime, the prosecution arguments may continue but thereafter the trial to remain stayed and defence argument not to start without further orders of this Court.

The Registrar General of the Patna High Court to send the details and files when Judge Yogender Prasad was promoted as a District Judge and all papers regarding posting of the present incumbent Shri Muni Lal Paswan."

This Court declined to grant stay of transfer of Special Judge Shri Yogender Prasad as he was promoted to the post of Principal Sessions Judge. This Court also passed an Order on 26.12.2005 wherein the details regarding the appointment of the present incumbent Shri Muni Lal Paswan were sought from the High Court. The entire records relating to the appointment of Shri Muni Lal Paswan as a special judge CBI, Patna have been produced in this case including the Confidential Registers of the various officers. On perusal of these records, we find that the Standing Committee of the High Court took a decision to post Shri Muni Lal Paswan as the CBI Special Judge, Patna. Six senior most judges of the High Court of Patna constituted the Standing Committee of the High Court and the decision was taken in the meeting of the Committee held on 22nd June, 2005. The decision of the Standing Committee is recorded as follows:-

"Having considered the relevant service records of the officers concerned as also taking into consideration the fact that no allegation petition has been received against Sri Muni Lal Paswan, Additional District Judge, Sahara. It is resolved that let him (Sri Muni Lal Paswan) be posted as Special Judge for C.B.I. (Fodder Scam Cases) at Patna. It is further resolved upon consideration of the relevant service records of the officers concerned that Shri J.P. Ratnesh, Additional District Judge, Patna, be posted as Special Judge, C.B.I. (South Bihar) and Sri Ram Niwas Prasad, Additional District Judge, Patna, as Special Judge for Vigilance Case (Court No. 1).

In view of the urgency of the matter, the officer is directed to take necessary steps for issue of notification immediately."

Though the petitioners have not made any allegations in the Writ Petitions, at the time of argument, the learned Senior Counsel stated that Shri Muni Lal Paswan was having poor record and he was not senior to be appointed as a Special Judge. We have perused the Confidential Register of Shri Muni Lal Paswan which was made available to us. Of course, the Confidential Register of this Officer was available only upto 2003. For some period, he was working on deputation and the inspecting judge had not recorded the confidential registers for that period, though the confidential registers of other officers were available to the Standing Committee. The Confidential Reports of Shri Muni Lal Paswan from 1981 to 2003 have been produced in Court. We have perused the Confidential Register of this Officer and it has been repeatedly recorded that this Officer has maintained honesty and integrity during the period under report. About his conduct and integrity, nothing adverse is reported against him. Of course, in some of the years, this Officer has been graded as 'Category B' with regard to his judicial performance. These are all matters considered by the Standing Committee which consists of senior judges of the High Court. The appointment of this Officer is not challenged by the petitioners and no pleadings also made in the main Writ Petition. By filing a Criminal Miscellaneous Application, the petitioners have made series of allegations which are not borne out by any records. If at all, the petitioners had any grievance regarding the appointment of any particular Officer, the proper remedy was to approach the High Court and to bring this fact to the notice of the Chief Justice. Under the above circumstances, we do not find any material on record to show that there was any illegality or serious infraction of any procedure in the appointment of the present CBI (Special Judge), Patna and the appointment as such cannot be challenged in a collateral proceedings and this Court cannot go into the question of appointment of a Special Judge which is exclusively within the domain of the High Court under Article 235 of the Constitution. Therefore, the oral appeal of the petitioners for the change of the Officer of the Special Judge cannot be granted.

The learned Counsel for the petitioners also alleged that the public prosecutor who was conducting the case no. 5/98 against the respondent nos. 4 and 5 was removed by the Director of the CBI presumably under pressure from the accused and one Uma Shankar Singh was appointed and he was a Deputy Superintendent of Delhi Police and had commenced his law practice only recently. The petitioners alleged that the respondent nos. 4 and 5 were unnecessarily interfering in the course of justice and managed to change the public prosecutor who was diligently discharging his duties.

In the rejoinder affidavit filed on behalf of the petitioners, the petitioners reiterated their allegation and stated that Shri L.R. Ansari who had been conducting the disproportionate assets case, had examined 225 witnesses, was sent elsewhere and some other public prosecutor was appointed. Refuting all these allegations, a counter-affidavit was filed on behalf of respondent no. 2 CBI. In the counter-affidavit, it is stated that disproportionate assets case against respondent nos. 4 and 5 was being conducted by Shri L.R. Ansari, right from the beginning. He had examined 132 witnesses from the prosecution and the defence had also examined 93 witnesses. Arguments on behalf of the petitioners were completed on 14.7.2004 and the arguments on behalf of the defence started on 19.7.2004 and as the case was practically over, it was decided to avail Shri Ansari's service in other Animal Husbandary cases. It is also stated that if found necessary, Mr. Ansari would be called to give any reply at the end of the case. As regards Shri Oma Shankar Sharma, it is submitted that he had started his practice as an Advocate on 23.2.1968 and he was appointed as a Prosecutor in 2.1.1973 in Delhi and conducted several cases before criminal courts in New Delhi. He was promoted as Senior-cum-Additional Public Prosecutor on 16.10.1992 and conducted several important cases including TADA cases. He was appointed as a Legal Adviser to the Commissioner of Police, Delhi and continued upto 31.8.2003.

From the averments made in the counter-affidavit, it is clear that the earlier prosecutor Shri Ansari had completed the cases and examined all the witnesses for the prosecution as well as for the defence and he had also submitted his entire arguments to the Special Judge. Therefore, the contention of the petitioners that the prosecutor was purposely changed to give benefit to respondent nos. 4 and 5 is not correct. There is no allegation to prove that respondent nos. 4 and 5 had in any way interfered with the appointment of the Public Prosecutor. The petitioners could not produce any documents to show that the allegations made in the original petitions were true.

The learned Counsel for the respondent nos. 4 and 5 submitted that the original petition is a politically motivated move to malign respondent nos. 4 and 5 and this sort of public interest litigation should not be entertained by the Court and placed reliance on the series of decisions passed by this Court. It may be noticed that the case nos. 5/98 has been filed against the respondent nos. 4 and 5 alleging that they had amassed wealth disproportionate to their known sources of income while holding the post of Chief Minister of the State of Bihar. Both the petitioners are not in any way connected with this case. They are not de-facto complainant in this case. It is for the prosecution to prove its case and the respondent nos. 4 and 5 to deny that the allegations are not true and they did not have the disproportionate income as alleged by the prosecution. It is a criminal litigation exclusively between respondent nos. 4 and 5 and the State. It is also important to note that in a case of this nature, nobody else has got any right to interfere especially by way of public interest litigation or else such public interest litigation would only hamper the course of justice and may cause prejudice to the accused by denying a fair trial. In this case, as early as 2004, 132 witnesses were examined on the side of the prosecution and 93 witnesses were examined on the defence side. Arguments of the prosecution were over as early as in 14.7.2004 and the defence arguments continued upto 19.7.2004. Because of the present public interest litigation, the trial could not be conducted. It is equally important to note that though the petitioners have alleged series of irregularities, but they are not supported by basic facts having solid foundation.

This Court in Janata Dal Vs. H.S. Chaudhary and Others 1992 (4) SCC 305 held that in a criminal case, a person who has no

interest shall not invoke the jurisdiction of the Court by intervening in the proceedings and a person acting bona fide and having sufficient interest in the proceeding alone has locus standi to file a public interest litigation and a person for personal gain or private profit or political motive, or any oblique consideration has no such right to file public interest litigation.

The respondent nos. 4 and 5 relied on Ashok Kumar Pandey Vs. State of W.B. 2004 (3) SCC 349. That is a case where petition was filed under Article 32 of the Constitution purportedly in public interest but the prayer was to the effect that the death sentence imposed on one 'D' by the Sessions Court, affirmed by the Calcutta High Court and the Supreme Court, needed to be converted to a life sentence because there had been no execution of the death sentence for a long time. Therein, this Court said that a person acting bona fide and having sufficient interest in the proceeding alone can initiate public interest litigation and that the court must not allow its process to be abused for oblique considerations.

In Union of India and Others Vs. Sushil Kumar Modi and Others 1998(8) SCC 661, a three Judge bench of this Court held that once a charge-sheet is filed in the competent court after completion of the investigation, the process of monitoring by the monitoring Court for the purpose of making the CBI and other investigative agencies concerned perform their function of investigating into the offences concerned comes to an end; and thereafter it is only the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused, including matters falling within the scope of Section 173(8) of the Code of Criminal Procedure.

In the instant case, the petitioners have approached this case by filing this public interest litigation under Article 32 of the Constitution at the time when the recording of the prosecution evidence was almost over and the trial of the case reached a final stage. If at all, the petitioners had any grievance regarding the removal of the public prosecutor, they should have submitted their grievance before the Special Judge or before the High Court. It is already noticed that the petitioners had no direct connection with this case. They were absolutely strangers as regards the criminal cases against respondent nos. 4 and 5 which was pending before the Special Judge. This unnecessary interference in the criminal case may cause, sometimes, damage to the prosecution case and at times may cause serious prejudice to the accused also. In any view of the matter, this sort of interference in the criminal prosecution would only deny a fair trial to the accused.

The petitioners in the writ petitions have prayed to re-engage the same prosecutor who was handling the case in the Trial Court from the very beginning of the trial. The earlier prosecutor had already been deployed to conduct some other case and we do not think that there is any necessity to give any direction to the CBI. However, the CBI would be at liberty to make use of the services of the earlier Prosecutor Shri Ansari. The second prayer of the petitioners that the present Special Judge is to be replaced by another Judicial Officer also cannot be granted as the appointment of the Judge has been validly made by the High Court. In the petition, there was no allegation against the present Judicial Officer warranting his removal from the post.

The petitioners prayed for a Writ of Mandamus directing the respondent nos. 1 to 3 to file appeal against the orders passed by the ITAT. The petitioners have not made out any case for issuing any such Writ of Mandamus. The respondent nos. 1 to 3, after following the due procedure, have decided not to file an appeal against the order passed by ITAT and we do not find any reason to give any

direction to file appeal.

The last prayer of the petitioners is that the bail granted to respondent nos. 4 and 5 is liable to be set aside. The petitioners could not prove anything that these respondents have interfered in the course of justice and they misused the privilege of bail extended to them. The petitioners have also no case that they are likely to flee from justice. The petitioners have not made out any case for cancellation of their bail.

The prayers sought for in the Writ Petitions cannot be allowed and the Writ Petitions being without any merits are liable to be and dismissed accordingly. All interim orders passed in the Writ Petitions are vacated.

JUDIS