Secretary, Minor Irrigation & Rural ... vs Sahngoo Ram Arya And Anr. on 7 May, 2002

Equivalent citations: AIR2002SC2225, 2002(3)AWC2509(SC), 2002CRILJ2942, [2002(2)JCR167(SC)], JT2002(SUPPL1)SC286, 2002(4)SCALE455, (2002)5SCC521, 2002(2)SCT1090(SC), (2002)2UPLBEC1904, AIR 2002 SUPREME COURT 2225, 2002 (5) SCC 521, 2002 AIR SCW 2333, 2002 ALL. L. J. 1470, 2002 (1) JT (SUPP) 286, 2002 (2) LRI 133, (2002) 3 ALLMR 579 (SC), (2002) 2 JCR 167 (SC), (2002) 3 LAB LN 25, 2002 (3) ESC 1, 2002 (6) SRJ 275, 2002 (4) SLT 49, 2002 (2) ALL CJ 1401, (2002) 3 RECCRIR 413, (2002) 4 SUPREME 91, (2002) 2 UPLBEC 1904, (2002) 3 ALL WC 2509, (2002) 4 SCALE 455, (2002) 2 SCT 1090

Bench: N. Santosh Hegde, Shivaraj V. Patil

JUDGMENT

1. Leave granted.

2. These two appeals arise out of an order made by the High Court of Judicature at Allahabad dated 16.3.2001 in Civil Misc. W.P. Nos. 24759 and 28512 of 1999. The original writ petitioner had filed a number of writ petitions challenging the various actions taken by the Department against him. In the said writ petitions he had made very serious allegations against Sri Markandey Chand who was then the Minister for Minor Irrigation and Rural Engineering Services in the Government of U.P. It is seen from the record that the said Minister had filed a counter affidavit denying the allegations leveled against him. In the said writ petitions, originally the High Court had passed certain interim orders staying the action initiated by the Department against which the Department had filed SLPs before this Court which challenge was allowed and this Court as per its order dated 3.4.2000 while directing the parties to maintain status quo as on the date of the said order, requested the High Court to hear and dispose of all the writ petitions within a period of 6 months from that date. After the said order of this Court, the High Court by its impugned order held that it was necessary to inquire into the allegations made against the said Minister. It directed the Central Bureau of Investigation (CBI) at Delhi to hold an inquiry into the allegations made against the said Minister (respondent No. 2) as early as possible, preferably within 4 months from the date of the production of the certified copy of the impugned order.

3. It is this order that is challenged in these appeals. Mr. Mukul Rohtagi, learned Additional Solicitor General, contended before us that the High Court could not have directed an inquiry by the CBI against the Minister concerned without coming to a conclusion that there was a prima facie case to held such an inquiry which conclusion according to him ought to be based on the material on record which obviously means the allegations made in the writ petition as also the denial of the Minister

concerned should also be taken into consideration. In support of his argument, he has placed strong reliance on the judgment of this Court in Common Cause, a Registered Society v. Union of India & Ors. . Mr. G.L. Sanghi, learned senior counsel appearing for the concerned Minister, has supported the above argument and has contended that there is not even an iota of truth in the allegations made against the Minister, hence, the High Court could not have directed an inquiry.

4. Per contra, Mr. P.N. Misra, learned senior counsel appearing for the writ petitioner, pointed out the allegations against the Minister are very serious and the same pertained to many incidents and similar allegations have been made against the Minister by a large number of aggrieved Government servants before the High Court in their respective writ petitions. He said that there was sufficient material to come to the conclusion that the allegations made against the Minister are genuine, thus, he supported the impugned order of the High Court.

5. While none can dispute the power of the High Court under Article 226 to direct an inquiry by the CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a need for such inquiry. It is not sufficient to have such material in the pleadings. On the contrary, there is a need for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an inquiry by the CBI.

This is a requirement which is clearly deducible from the judgment of this Court in the case of Common Cause (supra). This Court in the said judgment at paragraph 174 of the report has held thus:

> "The other direction, namely, the direction to CBI to investigate "any other offence" is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person's involvement is prima facie established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of "LIFE" and "LIBERTY" guaranteed to a person under Article 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of "LIFE" has been explained in a manner which has infused "LIFE" into the letters of Article 21."

6. It is seen from the above decision of this Court that the right to life under Article 21 includes the right of a person to live without being hounded by the Police or the CBI to find out whether he has committed any offence or is living as a law- abiding citizen. Therefore, it is clear that a decision to direct an inquiry by the CBI against a person can only be done if the High Court after considering the material on record comes to a conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency, and the same cannot be done as a matter of routine or merely because a party makes some such allegations. In the instant case, we see that the High Court without coming to a definite conclusion that there is a prima facie case established to direct an inquiry has proceeded on the basis of 'ifs' and 'buts' and thought it

appropriate that the inquiry should be made by the CBI. With respect, we think that this is not what is required by the law as laid down by this Court in the case of Common Cause (supra).

7. Just to point out that there is no prima facie finding by the High Court, while directing an inquiry by the impugned order, we would like to extract the following few sentences:

8. At page 8 of the impugned judgment, it is stated : "It is also alleged that the petitioner is being harassed owing to the reason that he was not amenable to the illegal demands made by the Minister concerned." The High Court further observed : "We however, forbear from excoriating the Minister on the basis of what has been said in the said News Magazine at this stage." Proceeding further, the Court observed : "If the allegations in the writ petitions are correct, the rights of the respondents must be vindicated and the party at whose instance such orders have been issued in bad faith, his continuance in the office is not in public interest." At page 9 of the judgment, the learned Judges observed : "If the allegations made in these and various other writ petitions are found to have any ring of truth, no same person can claim that the affairs of the State are being run in accord with the Constitution." From the above, we see that the High Court has merely quoted certain allegations made against the Minister. It has not taken into consideration the reply given by the Minister. While directing an inquiry by the CBI, the High Court, as stated in the judgment of this Court in the case of Common Cause (supra), must record a prima facie finding as to the truth of such allegations with reference to the reply filed. In the instant case, we have noticed that the High Court has merely proceeded on the basis of the averments made in the petitions without taking into consideration the reply filed and without expressing its prima facie opinion in regard to these allegations. This having been not done, we find it necessary that the judgment impugned should be set aside and the matters be remanded to the High Court to consider the pleadings of the parties and decide whether the material on record is sufficient to direct the inquiry by the CBI. While doing so, it will take into consideration not only the allegations made in the writ petitions but also the reply given by the Minister. After such an exercise if the Court still thinks that the allegations require a further investigation by the CBI then it may do so after recording a prima facie finding which, of course, will be for the limited purpose of directing an inquiry.

We make it clear that we have not expressed any opinion in regard to the merits of the allegations or the reply thereto because this is something which has to be done by the High Court in the first instance.

9. The appeals are allowed and the impugned judgment is set aside. The matters are remanded to the High Court.

SLP (SIC) Nos. 5097-5102/2001

10. Leave granted.

11. These appeals are preferred against the order made by the High Court of Judicature at Allahabad in Civil Misc. W.P. No. 47130 of 2000 etc. on 1.2.2001. A Division Bench of the High Court of Allahabad by the impugned judgment has held that the petitioner in the said writ petitions has an

alternate remedy by way of petitions before the U.P. Public Service Tribunal (the tribunal), and had permitted the writ petitioner therein to approach the tribunal and directed the tribunal to entertain any such petition to be filed by the writ petitioner without raising any objection as to limitation. There was a further direction to the tribunal to decide the matter expeditiously.

12. Mr. Sunil Gupta, learned counsel appearing for the petitioner, contended that the remedy before the tribunal under the U.P. Public Service Tribunal Act is wholly illusory inasmuch as the tribunal has no power to grant an interim order. Therefore, he contends that the High Court ought not to have relegated the petitioner to a fresh proceeding before the said tribunal. We do not agree with these arguments of the learned counsel. When the statute has provided for the constitution of a tribunal for adjudicating the disputes of a Government servant, the fact that the tribunal has no authority to grant an interim order is no ground to by-pass the said tribunal. In an appropriate case after entertaining the petitions by an aggrieved party if the tribunal declines an interim order on the ground that it has no such power then it is possible that such aggrieved party can seek remedy under Article 226 of the Constitution but that is no ground to by-pass the said tribunal in the first instance itself. Having perused the impugned order, we find no infirmity whatsoever in the said order and the High Court was justified in directing the petitioner to approach the tribunal. In the said view of the matter, the appeals are dismissed. No costs.

SLP (sic) Nos. 16496-97/2001 :

13. In view of our judgment in C.A. Nos...../2002 @ SLP (sic) Nos. 6126-27 of 2001, no further orders are necessary in these petitions. They are disposed of accordingly.