

A JUSTICE V. ESWARAIAH (RETD.)

v

UNION OF INDIA & ORS.

(Special Leave Petition (C) No. 6100 of 2021)

B APRIL 12, 2021

**[ASHOK BHUSHAN AND R. SUBHASH REDDY, JJ.]**

- Public Interest Litigation: The instant special leave petition is filed by a non-party to the writ petition PIL questioning order passed in the writ petition – Before the High Court, the Registrar General of the High Court had filed preliminary counter affidavit questioning the genuineness of the PIL and pleaded that the petition was filed by political person to political gain and to malign the High Court – It was further stated therein that former High Court Judge 'VE' (the petitioner in the instant special leave petition) had also submitted a complaint with similar allegations to the President of India against the Chief Justice and further stated that after retirement, the former High Court Judge 'VE' had obtained post retirement office and is supporting the State Government under the cover of association maligning the High Court – High Court heard the preliminary objection and closed the matter for judgment – An I.A. No.7 of 2020 was thereafter filed by one 'SR' alongwith his affidavit stating that writ petition was vexatious and was instituted malafidely and with vested interest – The affidavit further pleaded that the incumbent Government has unleashed a vicious propaganda against the judiciary to cover up its shortcomings, in which some of the retired judges had become pawns in the hands of the Government and at their instance, under the guise of some organisations some vested interests were filing writ petitions to undermine the honesty, integrity and majesty of the judiciary – In paragraph 8, it was pleaded that on 20.07.2020, the former retired Judge 'VE' spoke to him and asked him whether he was aware of the letter submitted by All India Backward Classes Federation – The transcript of the said conversation alongwith audio recording was filed alongwith affidavit – High Court by impugned judgment requested a Retired Supreme Court Judge of to hold out an enquiry to find out the genuineness/authenticity of the conversation contained in the pen drive – former High Court Judge 'VE' filed instant special leave petition – This*

*Court granting time to him – Petitioner filed affidavit and admitted the conversation dated 20.07.2020 and also filed the corrected transcript of the English translation of the audio tape as Annexure P16, which was admitted to him – There is no reason to allow to continue the enquiry by Retired Judge as directed by the High Court by the impugned judgment – Authenticity and genuineness of the transcript having been admitted to the extent as contained in Annexure P-16, the direction by the High Court calling for report from the Retired Supreme Court Judge need not be allowed to continue – High Court ought not to have embarked on any other enquiry in the matter except to the maintainability of the PIL at the instance of the writ petitioner and the conversation dated 20.07.2020 filed before the High Court as well as the enquiry report sought was only with the above purpose – Now, English translation of the transcript dated 20.07.2020 having been admitted by the writ petitioner, which have been filed by petitioner himself as Annexure P-16, in event, the High Court intends to refer to the above transcript, if required, the same can be done only after giving an opportunity to the present petitioner.*

**Disposing of the special leave petition, the Court**

**HELD:** 1. The High Court has directed for enquiry into the transcript to find out the authenticity/genuineness of the conversation contained in the pen drive. Justice R.V.R., Retd. Judge of Supreme Court was requested to submit a report to the High Court as to the authenticity/genuineness of the conversation contained in the pen drive. The object and purpose of directing the enquiry was, thus, to find out the authenticity/genuineness of the conversation contained in the pen drive. This Court granting time to the petitioner by order dated 11.01.2021, petitioner having filed affidavit and admitted the conversation dated 20.07.2020 and has also filed the corrected transcript of the English translation of the audio tape as Annexure P16, which is admitted to him, there is no reason to allow to continue the enquiry by Justice R.V. Raveendran as directed by the High Court by the impugned judgment. Authenticity and genuineness of the transcript having been admitted to the extent as contained in Annexure P-16, the direction by the High Court calling for report from Justice R.V.R. need not be allowed to continue. [Para 12][372-E-H; 373-A]

- A **2. The High Court in its judgment clearly observed that the enquiry will not have any direct bearing on the issue involved in the main writ petition except to the extent of deciding the allegations made in paragraph 13 of the preliminary counter affidavit. High Court had closed hearing on the preliminary objection regarding maintainability of the PIL on 31.07.2020 and when I.A. Nos. 7 and 8 of 2020 were filed to reopen the writ petition, the question before the High Court was only with regard to maintainability of the writ petition. Now, English translation of the transcript dated 20.07.2020 having been admitted by the writ petitioner, which have been filed by petitioner himself as Annexure P-16, in event, the High Court intends to refer to the above transcript, if required, the same can be done only after giving an opportunity to the present petitioner. [Paras 13, 14, 15][373-A-E]**
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CIVIL APPELLATE JURISDICTION: Special Leave Petition

- D (C) No. 6100 of 2021.

From the Judgment and Order dated 13.08.2020 of the High Court of Andhra Pradesh at Amravati in WP(PIL) No. 168 of 2020.

Prashant Bhushan, Ms. Cheryl D'souza, Advs. for the Appellant.

- E Sidharth Luthra, Sr. Adv., Ms. Garima Bajaj, Nikhil Bamal, Sheezan Hashmi, Anmol Kheta, Akshat Gupta, Zeeshan Mahmood, Anirudh Wadhwa, Atul Shankar Vinod, M.P. Vinod, Vipin Nair, Karthik Jayashankar, Arindam Ghosh, Anshumaan Bahadur, B.V. Balaram Das, Advs. for the Respondents.

- F The Judgment of the Court was delivered by

**ASHOK BHUSHAN, J.**

1. This special leave petition has been filed by the petitioner, a non-party, to the Writ Petition PIL No.168 of 2020 questioning the order dated 13.08.2020 passed in the writ petition.

- G 2. Application for permission to file special leave petition is allowed.
- 3. We had not issued the notice in this special leave petition, however, the respondent No.5, who was writ petitioner before High Court had appeared and filed a counter affidavit dated 13.01.2021.

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4. The brief facts of the case necessary to decide this special leave petition are:- A

4.1 The respondent No.5, BC SC ST Minority Student Federation, a registered society under the provisions of Societies Registration Act, 1860 has filed the Writ Petition No.168 of 2020 as the Public Interest Litigation praying for B following reliefs:-

- (i) Direct the Respondent No.1 to implement its guidelines in true spirit in order to prevent Covid-19 pandemic from spreading further, by its own machinery and State machinery in coordination to function effectively. C
- (ii) Direct the Respondent No.4 to strictly follow the guidelines issued by Respondent No.1 and their own guidelines by utilizing the State Machinery effectively in order to prevent Covid-19 pandemic from spreading further D
- (iii) Direct the Respondent No.3 to strictly follow the guidelines issued by Respondent No.1, 4, and the Honourable Apex Court in order to prevent Covid-19 pandemic from spreading further
- (iv) Direct the Respondent No.4 to declare Respondent No.3 premises as a Red Zone/containment Zone in order to prevent Covid-19 from spreading further E
- (v) Direct the Respondent No.1 and 2 herein to cause an enquiry to be conducted by a central and neutral agency to enquire into the incidents leading to the untimely death of Late B. Rajasekhar, Registrar General (In-charge) of the Respondent No.3 herein on 24/6/2020, the death of an employee working as Assistant in the V.R. Section and about 30 more employees being tested positive of Covid-19 F
- (vi) Direct the Respondent No.1 and 2 to consider imposing a strict curfew for at least 2 weeks by drafting para military forces if need be and by providing necessary mobile medical teams and essential commodity delivery G
- (vii) Direct the Respondent No.1 and 2 to consider imposing a strict curfew for at least 2 weeks by drafting para military forces if need be and by providing necessary mobile medical teams and essential commodity delivery H

- A teams in order to prevent Covid-19 pandemic from spreading further and in the interest of all concerned.
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- 4.2 The respondent No.3, the High Court of Andhra Pradesh represented by the Registrar General filed a preliminary counter affidavit dated 30.07.2020. In the preliminary counter affidavit, the locus of the Society to file the PIL was questioned. It was pleaded that PIL is not a genuine PIL having substantial public interest. In paragraph 13 of the preliminary counter affidavit, it was pleaded that petition has been filed by a political person to political gain and to malign the High Court. It was pleaded that former Justice V. Eswaraiah (the petitioner in this special leave petition) has also submitted a complaint with the same allegations to the President of India referred herein against the Chief Justice. Further, it was pleaded in paragraph 13 that after retirement Justice V. Eswaraiah had obtained a post retirement office and after achieving the said post retirement office, he wants to support the State Government under the cover of BC association maligning the High Court. It was pleaded in the preliminary counter affidavit that filing of the petition is mala fide and to achieve the oblique intention.
- 4.3 The High Court heard the preliminary objection and closed the matter for judgment on 31.07.2020. An I.A. No.7 of 2020 was filed by one S. Ramakrishna alongwith his affidavit stating that writ petition is vexatious and has been instituted malafidely and with vested interest. The affidavit further pleaded that the incumbent Government has unleashed a vicious propaganda against the judiciary to cover up its shortcomings, in which some of the retired judges like Justice V. Eswaraiah had become pawns in the hands of the Government and at their instance, under the guise of some organisations some vested interests have been filing writ petitions to undermine the honesty, integrity and majesty of the judiciary.
- 4.4 A representation dated 29.06.2020 submitted by Working President of All India Backward Classes Federation of which Justice V. Eswaraiah is President has also been

referred to in affidavit. In paragraph 8, it was pleaded that Personal Secretary of Justice V. Eswaraiah called him (Shri S. Ramakrishna) on his mobile phone on 20.07.2020 and told him that Retired Justice V. Eswaraiah wished to speak to him and gave his phone number. It was stated in the affidavit that during the course of conversation, Retd. Justice V. Eswaraiah asked him whether he was aware of the letter submitted by All India Backward Classes Federation dated 29.06.2020. The transcript of the said conversation alongwith audio recording was filed alongwith affidavit for perusal of the Court. The applicant prayed that Writ Petition PIL No.168 of 2000 be reopened and suitable orders be passed as may deem fit and proper.

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- 4.5 I.A. No.8 of 2020 was filed by Shri S. Ramakrishna praying that applicant (Shri S. Ramakrishna, petitioner) be permitted to intervene in the Writ Petition PIL No.168 of 2020 in public interest.
- 4.6 I.A. No.9 of 2020 was filed by respondent No.3 alongwith an affidavit of Registrar General, High Court of Andhra Pradesh. By I.A., respondent No.3 stated that during the course of the proceedings, learned Advocate General of the State of Andhra Pradesh has raised objection regarding contents of paragraph 13 of the preliminary counter affidavit dated 30.07.2020, so as to avoid unnecessary controversy, he may be permitted to delete paragraph 13 of preliminary counter affidavit dated 30.07.2020, which may be substituted by paragraph 13 as was set out in paragraph 4 of the affidavit. The application for amendment of preliminary counter affidavit dated 30.07.2020 was filed by respondent No.3.
- 4.7 The writ petitioner filed a counter affidavit to I.A. Nos. 7 and 8. The High Court by impugned judgment dated 13.08.2020 passed an order directing enquiry to find out the authenticity/genuineness of the conversation contained in the pen drive. The High Court requested Justice R.V. Raveendran, a Retired Judge of this Court to hold out an enquiry to find out the genuineness/authenticity of the conversation contained in the pen drive. The High Court held:-

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- A “.....Hence, we find that it is a fit case to order enquiry to find out the authenticity/genuineness of the conversation contained in the pen-drive. Therefore, we request The Hon’ble Sri. Justice R.V. Raveendran retired Judge of the Supreme Court of India to hold an enquiry to find out the authenticity/genuineness of the conversation, contained in the pen-drive.....”
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- 4.8 The High Court in the same paragraph with regard to enquiry which was directed, stated following:-
- “.....The enquiry is limited to find out the authenticity/genuineness of the conversation and third party interest behind the plot. However, this will not have any direct bearing on the issue involved in the main writ petition, except to the extent of deciding the allegation made in Paragraph No. 13 of the preliminary counter/preliminary written objections, but will be taken into consideration in any other incidental proceedings.....”
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- 4.9 The Registrar of the High Court was directed to duplicate set of record and pen drive and send one such copy to Justice R.V. Raveendran. The request as contained in the order of the High Court to Justice Raveendran was to the following effect:-
- “We request Hon’ble Sri. Justice R.V. Raveendran, Retired Judge of Supreme Court of India, to submit a report to this Court on the basis of the enquiry as to the authenticity/genuineness of conversation contained in pen-drive, the persons who had conversation and un-disclosed interest of third party/parties.”
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- 4.10 Aggrieved against the above direction of the High Court directing for enquiry through Justice R.V. Raveendran, Retired Judge, Supreme Court, the petitioner, Retired Acting Chief Justice of Andhra Pradesh High Court has filed this writ petition.
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- H 5. This special leave petition was taken for consideration on 11.01.2021. During submissions, learned counsel for the petitioner Shri Prashant Bhushan stated that the transcription of the talk between the petitioner with Mr. Ramakrishna dated 20.07.2020 has been filed as

Annexure P16 to the paper book. He did not dispute the conversation and prayed that the petitioner be permitted to file an affidavit with regard to conversation dated 20.04.2020. Following order was passed by this Court on 11.01.2021:-

“Mr. Prashant Bhushan, learned counsel appearing for the petitioner submits that the transcription of the talk between the petitioner with Mr. Ramakrishna dated 20.07.2020 is filed as Annexure P16.

Learned counsel for the petitioner does not dispute the conversation. He prays that he be permitted to file an affidavit of the petitioner with regard to above conversation.

Let affidavit be filed.

List the matter on 18.01.2021.”

6. In pursuance of the order of this Court dated 11.01.2021, affidavit dated 14.01.2021 has been filed by the petitioner Justice V. Eswaraiah (Retd.). In the affidavit, it has been admitted that a suspended District Munsif Magistrate of Andhra Pradesh, Mr. S. Ramakrishna called him over the Whatsapp on 20.07.2020. He, however, stated that he cannot say that if the conversation contained in the pen drive is the exact conversation. Justice V. Eswaraiah in paragraph 4C. of the affidavit disputed the English transcription of the audio conversation as filed by Mr. S. Ramakrishna before the High Court. However, he submitted that he is providing a corrected transcript of the talk contained in the pen drive as Annexure P-16 at pages 134-154. Paragraph 4C of the affidavit is as follows:-

“4c. .... I have provided a corrected transcript of the English translation of the audio tape contained in the pen drive supplied to me, in the SLP paper book as Annexure P16 at pages 134-154. I reiterate, this is the transcription of the audio version of the conversation which Mr. Ramakrishna has filed in the High Court.....”

7. We have heard learned counsel for the petitioner, learned counsel appearing for respondent No.5, Shri Tushar Mehta, learned Solicitor General has also appeared on behalf of Union of India.

8. Two applications, i.e., I.A. Nos. 3926 of 2021 and 3927 of 2021 and I.A. No.1215 of 2021 have been filed by intervenors praying to be permitted to intervene in the matter.

- A 9. In view of the order which is being proposed in this special leave petition, we see no reason to allow the intervention application Nos.3926 and 3927 of 2021 and I.A. No. 1215 of 2021. The intervention applications, thus, are not entertained.
- B 10. Learned counsel for the petitioner submits that the High Court could not have entertained the I.A. No.7 of 2020 and I.A. No.8 of 2020 at the instance of Shri S. Ramakrishna, a suspended Munsif when the writ petition was already closed on preliminary objection on 31.07.2020. It is submitted that private conversation between the petitioner and Shri Ramakrishna could not have been made subject matter of the writ petition.
- C The subject matter of the writ petition is entirely different from what is contained in the said conversation. It is submitted that Justice V. Eswaraiah was not given a notice by the High Court and the order has been passed in violation of principles of natural justice. It is submitted that High Court could not have passed any order directing for enquiry in the transcript dated 20.07.2020 without petitioner being given an opportunity. Learned counsel submits that petitioner since admits the transcripts, which has been filed as Annexure P-16 pages 134-154 of the paper book, there is no need to hold any enquiry by Justice R.V. Raveendran, which has been requested by the High Court to conduct the enquiry.
- E 11. We have considered the submissions of the learned counsel for the parties and have perused the records.
- F 12. As noted above, the High Court has directed for enquiry into the transcript to find out the authenticity/genuineness of the conversation contained in the pen drive. Justice R.V. Raveendran, Retd. Judge of Supreme Court was requested to submit a report to the High Court as to the authenticity/genuineness of the conversation contained in the pen drive. The object and purpose of directing the enquiry was, thus, to find out the authenticity/genuineness of the conversation contained in the pen drive. This Court granting time to the petitioner by order dated 11.01.2021, petitioner having filed affidavit and admitted the conversation dated 20.07.2020 and has also filed the corrected transcript of the English translation of the audio tape as Annexure P16, which is admitted to him, we see no reason to allow to continue the enquiry by Justice R.V. Raveendran as directed by the High Court by the impugned judgment. Authenticity and genuineness of the transcript having been admitted to the extent as contained in Annexure P-16, we are of the view that the

direction by the High Court calling for report from Justice R.V. A Raveendran need not be allowed to continue. We order accordingly.

13. The High Court in its judgment as extracted above has clearly observed that the enquiry will not have any direct bearing on the issue involved in the main writ petition except to the extent of deciding the allegations made in paragraph 13 of the preliminary counter affidavit. B High Court had closed hearing on the preliminary objection regarding maintainability of the PIL on 31.07.2020 and when I.A. Nos. 7 and 8 of 2020 were filed to reopen the writ petition, the question before the High Court was only with regard to maintainability of the writ petition.

14. We are of the view that the High Court ought not to have embarked on any other enquiry in the matter except to the maintainability of the PIL at the instance of the writ petitioner and the conversation dated 20.07.2020 filed before the High Court as well as the enquiry report sought was only with the above purpose. C

15. Now, English translation of the transcript dated 20.07.2020 having been admitted by the writ petitioner, which have been filed by petitioner himself as Annexure P-16, we are of the view that in event, the High Court intends to refer to the above transcript, if required, the same can be done only after giving an opportunity to the present petitioner, Justice V. Eswaraiah. D

16. We have not issued notice in the special leave petition neither have entered into the merits of the writ petition, nor expressing any opinion on the maintainability of the Writ Petition PIL No.168 of 2020, it is for the High Court to proceed with the writ petition and decide the same, including the maintainability of the PIL, after hearing arguments on which point the orders were reserved. E F

17. The special leave petition is disposed of accordingly.