

A THE STATE OF WEST BENGAL & ORS.

v.

SUVENDU ADHIKARI & ORS.

(Special Leave Petitions (Criminal) Nos. 6283-6286 of 2023)

B JULY 24, 2023

**[DR. DHANANJAYA Y. CHANDRACHUD, CJI,
J. B. PARDIWALA AND MANOJ MISRA, JJ.]**

- National Investigating Agency Act, 2008 – s.6(5) – Exercise of Jurisdiction u/s. 6(5) – Six FIRs were registered between 30.03.2023 to 03.04.2023 in relation to different incidents – Acting on a Public Interest Litigation, High Court by its order held that the allegations implicate offences punishable under the Explosive Substances Act, and held that the entire investigation should be transferred to the National Investigation Agency with a direction to*
- C *the Central Government to exercise their power u/s 6(5) Act of 2008 – Central Government issued notification in exercise of its power u/s. 6(5) – Pursuant thereto, Six FIRs registered on 10.05.2023 and cognizance taken by Special Court – On appeal, held: The NIA has exercised its jurisdiction specifically with reference to its powers under Section 6(5) – The precise contours of the investigation which should be carried out by the NIA cannot be anticipated or restricted at present stage – Cognizance also taken by NIA Court – The judgment of High Court affirmed – SLP disposed of.*
- D *the Central Government to exercise their power u/s 6(5) Act of 2008 – Central Government issued notification in exercise of its power u/s. 6(5) – Pursuant thereto, Six FIRs registered on 10.05.2023 and cognizance taken by Special Court – On appeal, held: The NIA has exercised its jurisdiction specifically with reference to its powers under Section 6(5) – The precise contours of the investigation which should be carried out by the NIA cannot be anticipated or restricted at present stage – Cognizance also taken by NIA Court – The judgment of High Court affirmed – SLP disposed of.*
- E *the Central Government to exercise their power u/s 6(5) Act of 2008 – Central Government issued notification in exercise of its power u/s. 6(5) – Pursuant thereto, Six FIRs registered on 10.05.2023 and cognizance taken by Special Court – On appeal, held: The NIA has exercised its jurisdiction specifically with reference to its powers under Section 6(5) – The precise contours of the investigation which should be carried out by the NIA cannot be anticipated or restricted at present stage – Cognizance also taken by NIA Court – The judgment of High Court affirmed – SLP disposed of.*

F EXTRA ORDINARY APPELLATE JURISDICTION: Special Leave Petition (Criminal) Nos. 6283-6286 of 2023.

F From the Judgment and Order dated 27.04.2023 of the High Court at Calcutta in WPA (P) Nos.151, 154, 156 and 162 of 2023.

G Dr. Abhishek Manu Singhvi, Gopal Shankarnarayan, Sr. Advs., Sanjay Basu, Amit Bhandari, Nipun Saxena, Srisaty Mohanty, Ms. Aditi Gupta, Ms. Anju Thomas, Sanjeev Kaushik, Ms. Mantika Haryani, Shreyas Awasthi, Himanshu Chakravarty, Ms. Ripul Swati Kumari, Bhanu Mishra, Ms. Muskan Surana, Saransh Bhardwaj, Archit Adlakha, Ms. Soumya Saxena, Aditya Raj Pandey, Ms. Astha Sharma, Advs. for the Petitioners.

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Tushar Mehta, Solicitor General, P. S. patwalia, Sr. Adv., Pranab Prakash, Abhishek Sarkar, Ms. Bansuri Swaraj, Siddhesh Kotwal, Ms. Ana Upadhyay, Ms. Manya Hasija, Nihar Dharmadhikari, Tejasvi Gupta, Ms. Mahamaya Chatterjee, Lokenath Chatterjee, Rahul Sharma, Nirnimesh Dube, Kanu Agarwal, Anmol Chandan, Ashok Panigrahi, Ms. Sansriti Pathak, Arvind Kumar Sharma, Siddhesh Shirish Kotwal, Advs. for the Respondents.

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The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, CJI

1. Six first information reports were registered by the Police in the State of West Bengal. Details of these first information reports have been tabulated in a statement which has been furnished by the State of West Bengal :

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S. No.	FIR No.	Place of Incident	Time of Incident	Police Station
1	FIR No. 113/2023 dated 31.03.2023 @ 193/I	GT Road near 4 th ByeLane PM Basti	16:50 to 17:25	Shibpur , Howrah
2	FIR No. 114/2023 dated 31.03.2023 @ 205/I	GT Road Near PM Basti 2 nd Bye Land (Choti Masjid)	13:15 hrs	Shibpur , Howrah
3	FIR No. 78/2023 dated 30.03.2023 @ 297/I	Dalkhola Underpass, approx 2 km North West from PS Dalkhola	12:35 hrs to 16:35 hrs	Dalkhola
4	FIR No. 141/2023 dated 02.04.2023 @ 316/II	Infront of Baro Masjid Rishra	19:45 hrs to 22:55 hrs	Serampore
5	FIR No. 144/2023 dated 03.04.2023 @ 330/II	In front of 4 no. Rail Gate, LBS Road, PO Rishra	20:05 hrs to 22:05 hrs	Serampore
6	FIR No 48/2023 dated 03.04.2023 @ 334/I	NS Road area Kali Mandir PO	12:10 hrs.	Rishra

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2. Acting on a Public Interest Litigation, a Division Bench of the High Court of Judicature at Calcutta by its order dated 27 April 2023 held that the allegations implicate offences punishable under the Explosive Substances Act. Hence, the High Court held that this is a fit case where the entire investigation should be transferred to the National Investigation Agency with a direction to the Central Government to exercise their

- A power under Section 6(5) of the National Investigating Agency Act 2008.
3. The proceedings were thus disposed of by the High Court by directing the State police to ensure that all the FIRs, documents, material seized and CCTV footage, among other things, should be immediately handed over to the NIA which shall commence investigation and proceed
- B in accordance with law. The police authorities of the State of West Bengal were directed to hand over all material to the NIA within two weeks.
4. During the course of hearing, we have heard Mr Gopal Sankarnarayan, senior counsel appearing on behalf of the State of West Bengal, Mr Tushar Mehta, Solicitor General of India appearing on behalf
- C of the NIA, Mr PS Patwalia, senior counsel appearing on behalf of the original petitioner before the High Court and Ms Bansuri Swaraj, counsel appearing on behalf of an intervenor who had filed a complaint arising out of the incidents in question.
5. The principal submissions which have been urged on behalf of
- D the petitioners are :
- (i) Six FIRs were registered by the police in relation to six different incidents spanning four distinct dates;
- (ii) The High Court has dwelt at considerable length on the previous orders which it passed for transfer of investigations
- E to the NIA;
- (iii) Two grounds have weighed with the High Court :
- (a) FIR 141 of 2023 dated 02 April 2023 contains allegations about the alleged use of bombs; and
- F (b) All four seizure memos appear to be in the same handwriting.
- (iv) As regards (a) above, the injuries sustained by the injured complainant indicate only abrasions which are inconsistent with such an incident. As regards (b) above, seven different police officers had carried out the investigation involving, *inter alia*, the preparation of the seizure memos;
- G (v) The police authorities in the State of West Bengal have duly acted in pursuance of the alleged incidents which took place during the course of the Ram Navami observances in the State; and

(vi) The direction by the High Court for the transfer of investigation A
to the NIA is not warranted and would demoralise the police
in conducting investigation in accordance with law.

6. On the other hand, the Solicitor General of India appearing on behalf of the NIA and the counsel appearing on behalf of the original petitioners and the intervenors supported the order of the High Court. B

7. Section 6(1) of the NIA Act requires an officer in-charge of a police station to forward a report to the State Government forthwith on the receipt of information and the recording thereof under Section 154 of the Code of Criminal Procedure, “relating to any scheduled offence”. The expression “relating to any scheduled offence” is an expression of a broad amplitude. Sub-section (2) of Section 6 mandates that on receipt of a report under Section 6(1), the State Government shall forward the report to the Central Government “as expeditiously as possible”. Thereafter, in terms of sub-section (3), the Central Government has to determine within a stipulated period on the basis of the information made available by the State Government “or received from other sources”, whether the offence is a scheduled offence or not and whether having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the agency. Upon forming such an opinion, the Central Government is empowered under sub-section (4) to direct the NIA to investigate the offence. E

8. Sub-section (1) of Section 6 casts an affirmative obligation initially on the officer in-charge of a police station to report to the State Government, on receipt of information under Section 154 relating to any scheduled offence. Section 6(2) casts a duty upon the State Government to forward the report to the Central Government expeditiously. As regards the role of the Central Government, sub- section (3) makes it abundantly clear that the formation of opinion on whether the offence is a scheduled offence and whether the case is a fit case to be investigated by the NIA having regard to the gravity of the offence, may be based not only on the information which has been made available by the State Government but also on such information as is received from other sources. The power of the Central Government to refer an investigation to the NIA is not constrained to the report which is submitted by the State Government upon receipt of the initial report of the officer in-charge of the police station. G

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- A 9. The Central Government, in terms of its mandate, has to apply its mind to whether firstly, the offence is a scheduled offence or not; and secondly, whether having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the NIA.
- B 10. Independent of these provisions, sub-section (5) of Section 6 which is prefaced by a *non obstante* provision empowers the Central Government to exercise a suo moto power to direct the NIA to investigate an offence when it forms the opinion that a scheduled offence has been committed which is required to be investigated under the Act. Upon exercise of powers by the Central Government either under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence would stand restrained from proceeding with the investigation and are duty bound to transfer the relevant documents and records to the NIA forthwith.
- C 11. The directions of the High Court in the impugned order were rendered on 27 April 2023. Following this, on 8 May 2023, the Central Government issued a notification in exercise of its power under Section 6(5). The notification which has been issued by the Central Government makes a reference to the order passed by the High Court but, having done so, it proceeds to expressly clarify that the power was also being exercised in terms of the provisions of Section 6(5). Pursuant thereto, six FIRs were registered on 10 May 2023. Cognizance has been taken by the Special Court on 11 May 2023. This sequence of events which has been indicated in the submissions of Mr PS Patwalia, senior counsel and as authenticated in the submission of the Solicitor General, is not in dispute. Hence, as the matter stands, the NIA has exercised its jurisdiction specifically with reference to its powers under Section 6(5).
- D 12. At this stage, the Court is not called upon to either decide on the sufficiency of the allegations or their veracity. The remit of this Court would be to determine whether the exercise of jurisdiction by the Central Government under Section 6(5) is extraneous to the powers conferred upon it by Section 6(5) so as to warrant the interference of this Court.
- E 13. The six FIRs which were registered by the State police authorities were all between 30 March 2023 and 3 April 2023 and straddle four police stations. Of them, two FIRs which have been recorded at Police Station Shibpur on 31 March 2023 relate to incidents which
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occurred on 31 March 2023 and are proximate in time. Likewise, the same situation appears from the FIRs which have been registered at Police Station Serampore on 2 April 2023 and 03 April 2023.

14. The precise contours of the investigation which should be carried out by the NIA cannot be anticipated or restricted at this stage. Cognizance has also been taken by the NIA Court.

15. There is no challenge to the validity of the notification which was issued under Section 6(5).

16. Hence, we are not inclined to entertain the Special Leave Petitions, though for the reasons which have been indicated above.

17. We clarify that the observations which were made by the High Court in the impugned order would be confined to the question as to whether the exercise of jurisdiction by the NIA under the National Investigation Agency Act, 2008 is valid. For the above reasons, we affirm the judgment of the High Court.

18. The Special Leave Petitions are disposed of in the above terms.

19. Pending applications, if any, stand disposed of.

Ankit Gyan
(Assisted by : Aarsh Choudhary, LCRA)

SLPs disposed of.