
(2011) 03 JH CK 0149

In the Jharkhand High Court

Case No : Writ Petition (Cri.) No. 434 of 2009

Alakhdeo Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Constitution of India, 1950 — Article 21

Penal Code, 1860 (IPC) — Section 420, 467, 468, 471, 477(A)

Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2011) CriLJ 4750

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mrs. Jaya Roy, J.—The petitioner has filed the instant writ application for issuance of appropriate writ order or direction particularly in the nature of certiorari for quashing the entire criminal proceedings initiated against the petitioner in connection with Ranchi Vigilance Case No. 19/2009 (Special Case No. 24/2009) dated 29-10-2009 for the offence under Sections 420, 467, 468, 471 and 477A of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act which is pending in the Court of Sri B. K. Khan, Additional Judicial Commissioner-cum-Special Judge (Vigilance), Ranchi.

2. Mr. B. M. Tripathy, counsel for the petitioner has submitted that on 24-2-2004 the Dy. Superintendent of Police (Vigilance), Ranchi has submitted an application before the Officer-in-charge, Vigilance P. S. Ranchi for proceeding against the petitioner and other persons for the offence under Sections 420, 467, 468, 471 and 477A and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. The aforesaid report has been submitted by the Dy. Superintendent of Police, Vigilance, Ranchi after making an inquiry upon the complaint given by Dr. Anjana Karketta and Dr. Pranya Mohan Sinha in Vigilance (Ranchi) P. S. Case No. 10/2003. In the said complaint it has been alleged that

some irregularities have been committed during the course of appointment of the doctors and para-medical officers in the district of Hazaribagh and it was requested for cancellation of the said appointment and for making inquiry into the matter. During the course of enquiry, it has come against the petitioner that during the course of appointment all the members of the Selection Committee and the members of the Screening Committee have prepared the chart in respect of the selection of the candidates according to the direction given by the petitioner.

3. The counsel for the petitioner has contended that except the aforesaid allegation, there is no specific allegation against the petitioner with respect to the commission of the alleged offence. He has further submitted that the present F.I.R. has been instituted with some ulterior motive and to give political advantage at the present situation at the instance of some of the political parties. It is also contended that the present F.I.R. is absolutely belated one as the case has been instituted on 29-10-2009 and the alleged occurrence has been taken place as far back as in the year 2003. His further contention is that preliminary enquiry was completed in the year 2004 particularly on 24-2-2004 but the same has been kept in abeyance for more than five years and the present F.I.R. has been lodged on 29-10-2009. The petitioner was posted as Deputy Commissioner, Hazaribagh in October, 2003 and he was transferred from the said post in February, 2004 and thereafter, the petitioner superannuated from his service in January, 2005. Mr. Tripathy has further contended that on 30-10-2003 an employment notice was published for recruitment of doctors and para-medical officers in the State of Jharkhand including the district of Hazaribagh. The appointment was to be made on contractual basis for a period of two years. The process of appointment was started on 30-10-2003. Thereafter, a Selection Committee was constituted in pursuance of letter No. 336(4) dated 6-11-2003 issued by the Secretary, Department of Health and Family Welfare, Jharkhand, Ranchi under the -Chairmanship of the Deputy Commissioner. The Selection Committee consists of six officers including the Deputy Commissioner and the Member Secretary of the Selection Committee was Civil Surgeon-cum-Chief Medical Officer, Hazaribagh and other members of the Selection Committee were Additional Chief Medical Officer and one representative of the Indian Medical Association. The process of selection was to be made on the basis of walk-in-interview which was to be conducted from 10th November, 2003 to 12-11-2003. In the advertisement of 13-10-2003, for appointment of the doctors and para-medical officers in the district of Hazaribagh, about 1200 candidates have filled up their application forms. The entire selection process had to be completed and the appointment letters were to be issued to the selected candidates before 15th November, 2003 as all the appointment letters were to be distributed to the selected candidates on the establishment day of Jharkhand i.e. on 15th November, 2003 at Ranchi. It is further stated that as per the direction given by the State Government since there was no specific procedure prescribed with respect to the selection and it was, only to be based upon walk-in-interview,

therefore, the candidates who were interested to join in the rural areas were to be given preference and the said instruction was given to all the Selection Committees in the State of Jharkhand.

4. Mr. B. M. Tripathy, Senior counsel for the petitioner has submitted that the petitioner being the Deputy Commissioner had to look after all the activities in respect of the law and order and other activities but even being the Chairman of the Selection Committee, the petitioner was not in a position to monitor the entire proceedings and it was done only by the Member Secretary who was Civil Surgeon-cum-Chief Medical Officer being an expert in the said field. Mr. Tripathy has further submitted that the entire process of selection was completed as the appointment letters were to be distributed on 15th November, 2003 at Ranchi. But, after publication of the advertisement on 31-10-2003, Junior Doctors Association, Ranchi had filed a writ application being W. P. (C) No. 5334/2003 before the Hon''ble High Court challenging the process of appointment itself. The matter was heard by the Division Bench and after hearing the parties, the Hon''ble High Court set aside the notices dated 30-10-2003 and 8-11-2003 and the process of selection undertaken thereupon and further the Government was directed to proceed with the regular appointment at the earliest. It is also observed that the Government also must ensure that a fair and proper selection is done by the State level body with competent persons. Mr. Tripathy has submitted that the respondents have no jurisdiction to institute the present criminal proceeding after lapse of six years. Furthermore, there is no specific allegation against the petitioner to constitute the offences under the aforesaid sections of the Indian Penal Code.

5. Mr. T. N. Verma, counsel appearing for the Vigilance submitted that the petitioner was the Chairman-cum-Deputy Commissioner and he is the person in-charge for the aforesaid selection and appointment of the doctors and paramedical officers. Therefore, it cannot be said at this stage that the petitioner has not committed any offence as alleged in the F.I.R. Even the Hon''ble High Court in W. P. (C) No. 5334/2003 has quashed the notices dated 30-10-2003 and 8-11-2003 and the process of selection undertaken thereupon and the Government was directed to proceed with the regular appointment at the earliest.

6. Mr. Verma has further contended that though there is some delay for the internal proceedings but as there is specific allegation against the petitioner, the entire criminal proceedings cannot be quashed at this stage. In this context Mr. Verma has cited a decision reported in Sajjan Kumar Vs. Central Bureau of Investigation, where Hon''ble Apex Court has held as under:--

37. Though delay is also a relevant factor and every accused is entitled to speedy justice in view of Article 21 of the Constitution, ultimately it depends upon various factors/reasons and materials placed by the prosecution. Though Mr. Lalit heavily relied on para 20 of the decision of this Court in Vakil Prasad Singh case, the learned Additional Solicitor General, by drawing our attention to the subsequent paragraphs i.e. 21, 23, 24, 27 and 29 pointed out that the principles

enunciated in Abdul Rehman Antulay case are only illustrative and merely because of long delay the case of the prosecution cannot be closed.

38. Mr. Dave, learned Senior counsel appearing for the intervenor has pointed out that in criminal justice "a crime never dies" for which he relied on the decision of this Court in *Japani Sahoo v. Chandra Sekhar Mohanty*. In SCC para 14, C. K. Thakker, J. speaking for the Bench has observed: (SCC p. 401)

14.....It is settled law that a criminal offence is considered as a wrong against the State and the society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a Court of law has no power to throw away prosecution solely on the ground of delay. (Emphasis in original)

39. In the case on hand, though delay may be a relevant ground, in the light of the materials which are available before the Court through CBI, without testing the same at the trial, the proceedings cannot be quashed merely on the ground of delay. As stated earlier, those materials have to be tested in the context of prejudice to the accused only at the trial.

7. After considering the submissions made by both the parties and perusing the documents annexed with this writ application by the parties, I find that the petitioner being Deputy Commissioner-cum-Chairman of the Selection Committee was responsible for the irregularities committed in the aforesaid appointments of the doctors and para-medical officers. Even, admittedly, the Hon"ble High Court has quashed the notices and also the selection process and directed the Government to proceed with the regular appointment. Furthermore, the Hon"ble High Court had observed that the Government also must ensure that a fair and proper selection is done by the State level body with competent and proper persons by its judgment dated 14-5-2004 passed in W. P. (C) No. 5334/2003. From the F.I.R. I find that there is specific allegation against the petitioner and against Sheo Kumar who was Civil Surgeon-cum-Chief Medical Officer of Hazaribagh at the relevant period.

8. Considering all these aspects and in view of the aforesaid decision of the Hon"ble Apex Court cited by Mr. Verma, I do not find any merit in this writ application. Accordingly, this application is dismissed.