

(2007) 05 PAT CK 0150
In the Patna High Court
Case No : Cr.WJC No. 352 of 2002

Ashok Kumar Singh

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 07-05-2007

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 3(a), 73, 76, 89
Criminal Procedure Code, 1973 (CrPC) — Section 197
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2007) 3 PLJR 802

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

Advocate : Abhay Kumar Singh, Ashwani Kumar Singh and Jai Prakash Singh, for the Appellant; A.N. Singh, S.K. Sharma for the Respondent Nos. 8 and 10, for the Respondent

Final Decision : Allowed

Judgement

I.P. Singh, J.—This criminal writ application is directed against the F.I.R., as contained in Annexure-25, filed against the petitioner lodged as Vigilance Rs. Case No. 7 of 2002 dated 20.8.2002 under various sections of the Indian Penal Code as also under sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (in short the Act). The petitioner is one of the accused in this case and he has prayed that the aforesaid F.I.R. be quashed and appropriate writ/order be issued in this regard not to investigate this case and to proceed against the petitioner in any manner whatsoever. He has further submitted that holding of the enquiry by the Cabinet (Vigilance) Investigation Bureau, Government of Bihar is bad in law and without jurisdiction. From the fact of this case it appears that the petitioner was posted as Managing Director. Bihar State Financial Corporation from 12.5.1994 to 19.6.1998 in his capacity as a senior I.A.S. Officer borne on Bihar cadre of the I.A.S. Officers. It further appears that with effect from 15.11.2000 to composite State of Bihar was bifurcated into the State of Bihar and State of Jharkhand by virtue of Bihar Reorganisation Act, 2000 (in

short the Act of 2000). On the creation of the State of Jharkhand the services of the petitionee was allotted/transferred to the State of Jharkhand. He was borne on the cadre of the I.A.S Officers of Jharkhand State wherein he was posted to different posts On the date of the filing of the writ application he was Secretary-cum-Commissioner, Commercial Taxes Department, Government of Jharkhand at Ranchi. He has contended that in view of the fact that ho has been allotted to the I.A.S. cadre of the Jharkhand State on 15.11.2000 the date on which the Jharkhand State came into existence. The Vigilance Department of the Government of Bihar ceased to have jurisdiction to investigate the case against him. Under law the investigation of any Vigilance case against him will have to be vested in the State of Jharkhand after its creation on 15.11.2000 In this view of the matter he has contended that the lodging of the F.I.R (Annexure-25) against him is completely without jurisdiction and, therefore, It is li-able to be quashed.

2. The parties have been heard at length on this question of law raised on behalf of the petitioner. On behalf of the respondents it has been submitted that since the alleged commission of offences by the petitioner had taken place within the State of Bihar while the petitioner was still serving State of Bihar it wilt have jurisdiction to proceed against him and to lodge the F.I.R. It has been submitted that the subsequent transfer of the petitioner to the State of Jharkhand will not make any difference inasmuch as the offences as alleged have been committed by him while he was serving in the State of Bihar. On this ground it has been pointed out that there is no merit in this submission of the petitioner.

3. The parties have been heard at length on various points raised by them in this regard. It is not in dispute that the petitioner was borne on the cadre of the IAS. in the composite State of Bihar before the creation of the State of Jharkhand. In this capacity he had served the State of Bihar in various capacities and with effect from 12.5.1994 to 19.6.1998 he was Managing Director of Bihar State Financial Corporation. It is also not in dispute that with effect from 15.11.2000 the date on which the State of Jharkhand was created his services were transferred to the State to which he was allotted and there also he served in various capacities. The important question that will arise in this connection would be whether after the petitioner was allotted to the I.A.S. cadre of the State of Jharkhand, will the Vigilance Department of Government of Bihar have any jurisdiction to investigate any case against him for the offences alleged to have been committed by him even during the period before the creation of the State of Jharkhand. Since this question is of considerable importance I will proceed to examine it in detail.

4. As mentioned above the Act of, 2000 came into force with effect from 15.11.2000. By this Act the composite State of Bihar was bifurcated and the State of Jharkhand was created. In this connection a reference may be made to Part VI of this Act which relates to provisions as to the services. Its Section 76 runs as follows:--

"76. Power of Central Government to give directions.--The Central Government

may give such directions to the State Government of Bihar and the State Government of Jharkhand as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Government shall comply with such directions."

5. Annexure 22 dated 28.3.2002 is the direction issued by the Government of India in which it was clearly provided that if any vigilance enquiry or investigation is pending against any Officer of All India Services it will be completed by the authorities of the State to which he has been allotted. In this Annexure a reference has been made to Memorandum No. 13013/8/2000-AIS(I) (Annexure-20). This is a notification/office memorandum issue by the Government of India under the subject--Personnel related issues incidental to bifurcation of States. Its paragraph 2 runs as follows:--

"2(a). The original service records as well as the CR dossiers of officers of the All India Services should be in the custody of the concerned State to which the individual officer stands allotted. Hence, the service records and CR dossiers of officers allotted to Jharkhand, Chhattisgarh and Uttranchal should be transferred to these States.

(b) The custody and conduct of pending disciplinary proceedings/inquiries in respect of AIS officers belonging to the new residual States is to be regulated by the explanation below Rule 7(1)(b) of the All India Services (Discipline and Appeal) Rules, 1969 which is as under:--

Explanation.--For the purposes of clause (b) of sub-rule (1) where the Government of a State is the authority competent to institute disciplinary proceedings against a member of the Service, in the event of a reorganization after such reorganization of the State. The Government on whose cadre he is borne after such reorganization shall be the authority competent to institute disciplinary proceedings and, subject to the provisions of sub-rule (2), to impose on him any penalty specified in Rule 6."

6. A reference to this memorandum has been made in Annexure 22 also and certain clarification has been made in its respect.

7. In this connection a reference may also be made to Annexure-21 which is a letter No. 1 Misc-8038/2001 Karmik 241/ 01. It is with respect to clarification regarding the pending proceedings against the AIS Officers pursuant to bifurcation of States. In it a reference has been made to letter No. 11018/2/2001-AIS(III) dated 10th July, 2001 in which the following clarifications have been given:--

(i) The Government of Jharkhand would be the competent authority to complete pending vigilance enquiries against officers who stand allocated to the Jharkhand cadre as has already been clarified in this Department's OM No. 13013/8/2000-AIS(I) dated 20.12.2000 (Annexure-20).

(ii) The Government of Jharkhand shall also be the competent authority to take a

decision regarding initiation of disciplinary proceedings or any other action based on the final report of any vigilance enquiry which may have been initiated by the Government of Bihar in respect of an officer who now stands allocated to Jharkhand cadre."

8. As stated above with the creation of State of Jharkhand the services of the petitioner stood transferred to this State with effect from 15.11.2000. It is clear that on this date the vigilance enquiry with respect to the Vigilance Rs. Case No. 7 of 2002 was pending against the petitioner whose F.I.R. (Annexure 25) is dated 20.8.2002 filed against the petitioner and others. This shows that till then the investigation against the petitioner was pending and the R.I.R. in this regard was lodged on 20.8.2002 much after the creation of the State of Jharkhand. The important question that will arise in this connection would be whether any investigation by the State of Bihar would have been carried out against an officer of IAS cadre whose services were transferred/ allotted to the State of Jharkhand with effect from 15.11.2000 culminating in lodging of the F.I.R. (Annexure 25) on 20.8.2002? From what has been noticed above it is clear that the law does not permit the Cabinet (Vigilance Department), Government of Bihar to lodge the F.I.R. against the petitioner on 20.8.2002 when he was already allotted to the State of Jharkhand with effect from 15.11.2000 and was borne on the I.A.S. cadre of that State. Obviously the answer to this question would be in negative. From this it would appear that the F.I.R. lodged against the petitioner in Vigilance Rs. Case No. 7 of 2002 (Annexure-25) was completely without jurisdiction in view of the letters and the different orders issued in this regard as noticed above.

9. On behalf of the respondents it has been submitted that the dates of the alleged occurrence were prior to the creation of the State of Jharkhand and, therefore, Section 73 of the Act of 2000 will make no difference. Moreover it has been contended that the alleged places of occurrence of the various offences said to have been committed by the petitioner were within the State of Bihar and, therefore, the Vigilance Department of the Government of Bihar will not lose the jurisdiction to proceed against the petitioner. In this connection my attention has been drawn to Section 89-of the Act of 2000 which runs as follows:--

"89. Transfer of pending proceedings.--(1) Every proceeding pending immediately before the appointed day before a court (other than the High Court), tribunal, authority or officer in any area which on that day falls within the State of Bihar shall, if it is a proceeding relating exclusively to the territory, which as from that day is the territory of Jharkhand State, stand transferred to the corresponding court, tribunal, authority or officer of that State."

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10. On the strength of this section it has been contended that since the alleged place of occurrence were located in the partitioned State of Bihar the Vigilance Department, Government of Bihar will continue to have jurisdiction in the matter and Section 76 of Act of 2000 will make no difference.

11. The parties have been heard at length on this point also. Section 76 empowers the Central Government to give directions to the State Government of Bihar and State of Jharkhand as may appear to it to be necessary for the purpose of giving effect to the provisions of this Act and State Government shall comply with such direction. As noticed above the Central Government have issued various directions in this regard as contained in Annexures 20 and 22 which clearly show that with effect from the creation of the State of Jharkhand any proceeding in the Vigilance Department or departmental proceeding pending against an I.A.S. Officer shall be continued by the State to which his services had been transferred. In this connection a reference may be made to Annexure 21 as noticed above.

12. The Learned Counsel for the Respondent No. 9 (Director General, Cabinet Vigilance, Investigation Bureau, Bihar, Patna has submitted written notes of arguments. Relying on Section 89 of the Act of 2000 he has submitted that the jurisdiction to lodge this case still continued with Respondent No. 9 since the alleged place of occurrence is at Patna and office of the Managing Director of Bihar State Financial Corporation is also located at Patna in support of his contention he has relied on the case of C.B.I. vs. Braj Bhushan Prasad 2001(4) PLJR (S.C.)107. It was his contention that in this decision the Hon"ble Supreme Court has laid down the true scope of Section 89 according to which the State of Bihar still continued to have jurisdiction in the matter even after 15.11.2000 the date on which the State of Jharkhand was created. From the facts of this case it would appear that out of 52 cases relating to the fodder scam in 38 cases charge-sheets were already filed by the C.B.I, before 15.11.2000 before the Special Court situated in Patna. These 36 cases were transferred to Jharkhand after the appointed day (15.11.2000). This was challenged by the accused in these cases. It was held by the Hon"ble Supreme Court that all these 36 cases involved in the appeals before it stood transferred to the corresponding courts situated within the territories of Jharkhand State on the appointed day (15.11.2000) by operation of Section 89 of the Act of 2000.

13. The facts of the present case are however entirely different. In the present case only F.I.R. (Annexure 25) has been instituted on 20.8.2002 (much after the appointed day) and the investigation is still pending. No charge-sheet has been submitted before any court at Patna till the date of filing of this application. The places of occurrence in the present case are also located in Bihar and not in Jharkhand. Hence it is clear that the facts of the present case are entirely different and therefore the above cited decision of the Hon"ble Supreme Court will not apply to the present case.

14. In this connection, a reference may be made to Section 89 also. It relates to the transfer of the pending proceedings. It provides that if from before the appointed day a proceeding is pending before any court in any area which on this date falls within the State of Bihar it shall stand transferred to Jharkhand State if the proceeding related exclusively to the territory of Jharkhand State, Section

3(a) of this section, however, makes the position clear. It lays down that in this section "proceedings" includes any suit, case or appeal. In the present case since however, not even F.I.R. was lodged before 15.11.2000 it will not be covered by this definition. Hence this section will not apply to the present case, notwithstanding the fact the office of the petitioner is located at Patna or the alleged places of occurrence are also located within the State of Bihar. Thus it is clear that Section 89 will not apply to the facts of the present case. Similarly the aforesaid decision also will not apply to the facts of the present case. As noticed above the proper section that will apply to the facts of this case would be Section 73 of the Act of 2000 and not. Section 89. Therefore, I do not find any merit in this contention of the Learned Counsel.

15. As against it there is specific provision in Section 76 of Act of 2000 that the Central Government was competent to issue necessary direction in this regard to both the States of Bihar and Jharkhand. As noticed above the Central Government have issued such directions as contained in Annexures 20 and 21 and 22 as noticed above. From this it would appear that the Vigilance Department, Government of Bihar or the Vigilance Rs. of the State of Bihar will have no jurisdiction to proceed against the petitioner in any manner whatsoever.

16. On behalf of the respondents my attention has been drawn to Annexure-13 which is an order passed by the High Court of Jharkhand on 20.4.2001 in CWJC No. 1573 of 2001. This order was passed by the learned Single Judge of High Court of Jharkhand at Ranchi. This application was filed before the High Court of Jharkhand by the present petitioner for quashing a notice dated 7.4.2001 issued by the Deputy Superintendent of Vigilance Investigation Bureau, Patna. The learned Single Judge had observed that the petitioner has only been directed to appear before the court below for further enquiry and as such at this stage this Court would not interfere with the impugned order. Against this decision dated 20.4.2001 L.P.A. No. 281 of 2001 was filed by the petitioner which was placed before the Division Bench consisting of the Hon''ble the Chief Justice and Hon''ble Mr. Justice D.N. Prasad. The judgment dated 27.9.2001 is contained in Annexure-14. After a detailed discussions the Court has observed that without offering any comment with regard thereto we leave it pen to the appellant to respond to that notice in the manner he is advised to do so. Thus no positive direction was passed in this L.P.A.

17. The petitioner had earlier moved to this Court in CWJC No. 7680 of 1997. Annexure 9 is the order dated 25.11.1997 passed by this Court in which the Vigilance Department had stated before the Hon''ble Court that the vigilance enquiry pending against the petitioner would be effected within a period of four months. In view of this stand taken by the Vigilance Department the present petitioner withdrew this application.

18. When this enquiry could not be completed with the time of four months as stated in Annexure-9 again this Court was moved by the petitioner for contempt of court in M.J.C. No. 1498 of 1998. This order is dated 29.9.2001. It was passed

by S.J. Mukhopadhyaya, J. in which further time to conclude the vigilance enquiry within a period of 8 months was granted by this Court as will appear from Annexure-10. It is obvious that even within this period the vigilance enquiry could not be completed and it still remain pending and finally it culminated by filing of the F.I.R. (Annexure-25) on 20.8.2002.

19. In this connection my attention has been drawn to Annexures-36 and 37 by which this Court was pleased to quash the criminal proceedings against Shri Sarwan Kumar, Advocate and also Sri Ran Vijay Kumar, the Principal of a local College inasmuch as there were no allegation against them with respect to any financial advantage gained by them.

20. The question of sanction has also been raised in this regard and various decisions have been cited in the written argument submitted by the respondent Cabinet (Vigilance Investigation Bureau) with respect to the according of sanction for the prosecution of the petitioner. However, I have not taken up for consideration this aspect of the matter as it has been held in the case of P.K. Pradhan Vs. The State of Sikkim represented by the Central Bureau of Investigation, that the question of sanction u/s 197 of the Code of Criminal Procedure can be raised at any time even after the cognizance may be immediately after cognizance or framing of the charge or even at the time of the conclusion of the trial and after conviction as well. Since, however, I have held that the F.I.R. (Annexure-25) lodged against the petitioner is without jurisdiction and if so advised the respondents may move the Vigilance Department of Government of Jharkhand in the matter. I have not expressing any opinion with respect to the legality or otherwise of the granting or non-granting of sanction in this case.

21. From the detailed discussions made above it becomes perfectly clear to me that lodging of the Vigilance Rs. Case No. 7 of 2002 dated 20.8.2002 against the present petitioner was without jurisdiction. Hence I have got no alternative but to quash the same.

22. In the result the F.I.R. (Annexure-25) lodged against the petitioner on 20.8.2002 is hereby quashed. Also the respondents are restrained from proceeding with the above noted case in any manner whatsoever. In the result this application is allowed in the manner as indicated above.