

(2015) 05 SC CK 0098

In the Supreme Court Of India

Case No : I.A. No. 13/2014 and Crl. M.P. No. 387/2015 in Writ Petition (C) No. 463/2012 (Under Article 32 of the Constitution of India)

Common Cause and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Constitution of India, 1950 — Article 20, 21
Criminal Procedure Code, 1973 (CrPC) — Section 195

Citation : AIR 2015 SC 2361 : (2015) 3 CCR 16 : (2015) CriLJ 2935 : (2015) 4 Crimes 269 : (2015) 4 MLJ 729 : (2015) 4 RLW 3247 : (2015) 6 SCALE 447 : (2015) 6 SCC 332

Hon'ble Judges : Madan B. Lokur, J;Kurian Joseph, J;A.K. Sikri, J

Bench : Full Bench

Advocate : A. Sharan, Vikas Singh, Guru Kishan Kumar, Senior Advs., Prashant Bhushan, Pranav Sachdeva, Sudip Shrivastava, Amit Anand Tiwari, Sanchit Guru, Ashutosh Jha, Abhinav Raghuvanshi, Abhinandan Banerjee, Deepika Kalia, Kapish Seth, Chandra Prakash, Meenakshi

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—The prayer in IA No. 13/2014 filed by Common Cause and Ors. is two-fold:

(1) Direct Mr. Ranjit Sinha, Director CBI, not to interfere in the coal block allocation case investigations and prosecutions being carried out by the CBI and to recuse himself from these cases.

(2) Direct an SIT appointed by the Hon'ble Court to investigate the abuse of authority committed by the CBI Director in order to scuttle inquiries, investigations and prosecutions being carried out by the CBI in coal block allocation cases and other important cases.

2. In so far as the first prayer is concerned, since Mr. Ranjit Sinha, the Director, Central Bureau of Investigation (for short the CBI) has admittedly superannuated

on or about 2nd December, 2014 the question of his recusal from investigations and prosecutions being carried out by the CBI in respect of cases arising out of what is now commonly known as the Coal Block Allocations case has become infructuous. We are, therefore, concerned only with the second prayer in the application.

3. The prayer in Crl. MP No. 387/2015 filed by Mr. Ranjit Sinha is as follows:

A. Direct the concerned Police Station to register an FIR against Mr. Prashant Bhushan, the Petitioner Association (i.e. Common Cause) and Mr. Kamal Kant Jaswal for making deliberate and intentional false statements on oath and before this Hon"ble Court in these proceedings,

B. Pass other or further orders as may be deemed fit and proper.

4. We propose to consider both these applications since we have heard submissions on them.

5. It is not necessary to go into the detailed background of the case since all the facts are on record in the judgment delivered by this Court in Manohar Lal Sharma Vs. The Principal Secretary and Others, (2014) 1 AD 73 : AIR 2014 SC 666 : (2014) 1 CCR 196 : (2014) CriLJ 1015 : (2014) 1 Crimes 16 : (2014) 1 JCC 282 : (2014) 1 JT 105 : (2014) 1 RCR(Criminal) 370 : (2013) 15 SCALE 305 : (2014) 2 SCC 532 : (2014) 1 SCJ 441 Nevertheless, some facts are necessary for the purposes of a decision on these applications.

6. During the course of hearing of the writ petition on 24th January, 2013 and in response to a query made by this Court, a statement was made by the learned Additional Solicitor General that on the next date of hearing, the status of the investigations (into the allotment of coal blocks) shall be made known to this Court through an affidavit filed by a competent authority. The case was then adjourned to 12th March, 2013.

7. Pursuant to the statement made by the learned Additional Solicitor General, a status report was filed by the CBI on 8th March, 2013 in a sealed cover. This status report was perused on 12th March, 2013 and upon a consideration of the entire matter, this Court required an affidavit to be filed by the Director, CBI that the status report submitted was vetted by him and nothing therein has been shared with the political executive. He was also required to state on affidavit that the same procedure would be followed in respect of subsequent status reports that may be filed in this Court. The status report was then re-sealed and the case adjourned to 30th April, 2013.

8. Acting on the above order, the Director, CBI filed the requisite affidavit on 26th April, 2013. When the case was taken up on 30th April, 2013 the affidavit filed by the Director, CBI was perused and this Court was of the view that the following aspects needed to be clarified by the Director, CBI:

(i) As to why in the status report dated 08.03.2013 no disclosure was made to

this Court that the draft report has been shared with the political executive and officials.

(ii) What was the basis and reasons for the C.B.I. in making the statement on 12.03.2013 through its counsel (Additional Solicitor General) before this Court that the status report dated 08.03.2013 has not been shared with any one and it is meant only for the Court.

(iii) In the affidavit now filed by the Director, C.B.I. on April 26, 2013 it is stated that the draft of the status report dated March 8, 2013 was shared with the Minister of Law and Justice as desired by him prior to its submission before this Court and it was also shared with Joint Secretary level officers each of the Prime Minister's Office and Ministry of Coal as desired by them but nothing has been said in the affidavit whether or not changes were made in the draft report and, if yes, at whose instance and the extent of changes and whether besides the three persons mentioned in para 4 of the affidavit, the draft report was shared with any other person in that meeting.

(iv) The names of the two officers one each of the Prime Minister's Office and Ministry of Coal referred to in para 4 of the affidavit.

(v) xxx

(vi) xxx

9. It was directed that an affidavit giving the above information may be filed by the Director, CBI by 6th May, 2013 and the case was then adjourned to 8th May, 2013. As required, the Director, CBI filed a further affidavit in this regard on 6th May, 2013.

10. When the case was taken up on 8th May, 2013 Mr. Prashant Bhushan learned Counsel for Common Cause made his submissions. Keeping the submissions in mind it was directed that the Director, CBI shall henceforth ensure the secrecy of inquiries and investigations into the allocation of coal blocks and that no access of any nature whatsoever is provided to any person or authority including any Minister of the Central Cabinet, Law Officers, Advocates of the CBI, Director of Prosecution and Officials/Officers of the Central Government.

11. It is in the background of the above broad facts relating to the secrecy (and purity) of the investigations that IA No. 13/2014 appears to have been moved by Common Cause with some additional facts having come to its notice after the aforesaid orders were passed by this Court.

Pleadings and documents

12. Apart from stating a few relevant facts in the application, what is of immediate concern is the averment made in paragraph 9 of the application that Common Cause has come to know that Mr. Ranjit Sinha, Director, CBI had met several persons at his residence who are accused in prominent cases including the Coal Block Allocation scam without any of the investigating officers being

present.

(Emphasis is given by us).

It is then stated in Para 10 of the application as follows:

It is of particular significance that Mr. Ranjit Sinha had several meetings with Mr. Vijay Darda, and his son Mr. Devendra Darda, who are being investigated in the case of illegal allocation of coal blocks. Mr. Sinha also met with Mr. Subodh Kant Sahay, former Union Minister, whose brother's company is one of the beneficiaries of the allocation of coal blocks and is being investigated by the CBI.

13. In paragraph 11 of the application, it is stated that there is an "entry register" containing details of visitors, including the accused persons, who met Mr. Sinha at his residence from time to time. It is stated that Mr. Sinha did not meet them at his office or in the presence of the investigating officers. Rather, he met them at his residence without the investigation team being present. A copy of the "entry register" is filed in a sealed cover as an annexure to the application.

14. In paragraph 12 of the application a reference is made to Mr. Ranjit Sinha meeting some accused persons in what is commonly known as the 2G spectrum case being an appeal filed by the Centre for PIL.¹

15. At this stage it is necessary to digress a bit and mention that in the 2G spectrum case, an application was filed by the Petitioner therein being IA No. 73 of 2014 in which it was prayed as follows:

(i) Direct the CBI Director Shri Ranjit Sinha not to interfere in investigation and prosecution of the case relating to the 2G spectrum allocation being carried out by the CBI, and to recuse himself from the case.

(ii) Pass further orders as may be deemed fit and proper.

16. An additional affidavit dated 5th September, 2014 was also filed in support of IA No. 73 of 2014 in which it was prayed that this Court should "order an SIT investigation into the gross abuse of authority committed by the CBI Director in trying to scuttle investigations and prosecutions being carried out by the CBI in 2G scam cases and other prominent cases..."

17. After an elaborate hearing, this Court passed an order in IA No. 73 of 2014 on 20th November, 2014 the relevant portion of which reads as follows:

To protect and preserve the sanctity and the fair name of the institution including the reputation of the Office of the Director of CBI, we are not deliberately giving out elaborate reasons. It would suffice for us to observe that the information furnished by the applicants is prima facie credible and therefore requires to be accepted.

Let it not be said by anybody, that we have not given any reasons while disposing of the application. We are reiterating this statement only to prevent flak from several quarters of the society. We would like to re-emphasize that

elaborate reasons are not necessary, only to protect the reputation of the CBI from being tarnished.

In view of the above, we grant the aforesaid relief sought by the applicants and pass the following orders:

(i) We recall our earlier order passed on 15.09.2014 so far as it relates to I.A. No. 73 of 2014.

(ii) We direct Shri Ranjit Sinha, CBI Director not to interfere in the investigation and prosecution of the case relating to the 2G spectrum allocation that is carried out by the CBI, and to recuse himself from the case.

(iii) Shri Ranjit Sinha shall be replaced by the senior most officer of the investigating team, constituted by the CBI to investigate into the case relating to the 2G spectrum allocation and continue the proceedings further.

With the above observations, I.A. No. 73 of 2014 (application for directions) is disposed of.²

18. In support of his submission that an SIT should be constituted to look into the abuse of authority by Mr. Ranjit Sinha in attempting to scuttle the investigations into the coal block allocations, Mr. Prashant Bhushan filed a short note dated 12th January, 2015. Along with the note, he annexed a photocopy of a file in respect of the case against the Dardas (abovementioned). It was submitted by Mr. Prashant Bhushan during the course of his oral submissions that the photocopy of the file was given to him by a whistle blower.

19. In response, the CBI filed a note date 18th September, 2014 in a sealed cover indicating the detailed procedure followed by the CBI before a final decision is taken by a competent authority on closing a case or filing a charge sheet. It is not necessary for us to go into the details of the procedure followed but it is necessary only to mention that the CBI does follow quite a detailed and open process of discussion and expression of views before a final decision is taken on matters before it. We may record that we have absolutely no quarrel with the procedure prescribed by the CBI before it takes a final decision. With regard to the "entry register" relied upon by Mr. Prashant Bhushan it is stated that a copy thereof has not been supplied to the counsel for the CBI and in any case it is the subject matter of an enquiry before another Bench dealing with the 2G spectrum case.

20. The CBI also filed a note dated 20th February, 2015 in a sealed cover. In this note, the merits of the controversy relating to the Dardas are adverted to and the decisions taken by the CBI have been justified. It is also stated that the strength of the CBI lies in the multiple levels of supervision where each level is free and independent in expressing its views and recommendations. It is only after taking account of these views and recommendations that the competent authority passes a final order which then becomes the stand of the CBI.

21. With reference to the "entry register" or the visitor's diary, it is stated that it has not been supplied to the CBI and it was not maintained by the CBI. It is submitted that since false statements have been made by Common Cause in respect of the case pertaining to the Dardas, the "visitor's diary" must also be viewed with suspicion.

22. Our attention has also been drawn to the order dated 8th May, 2013 passed by this Court to the effect that the secrecy of the inquiries and investigations must be ensured. It is submitted in this context that the fact that Common Cause has obtained a copy of the note sheets of the office file indicates that the secrecy of the concerned file has been compromised and that the CBI is taking steps to ascertain how the file moved out of the office.

23. Mr. Prashant Bhushan filed a note in rejoinder essentially reiterating the submissions made.

24. As far as Crl. MP No. 387/2015 filed by Mr. Ranjit Sinha is concerned, he states that Mr. Prashant Bhushan, Common Cause and Mr. Kamal Kant Jaswal of Common Cause have deliberately made misstatements and stated facts that are not true with a view to mislead this Court. It is submitted in the application that according to them, one Mr. Moin Qureshi had dealings with Mr. Sinha and that an appraisal report prepared by the Income Tax Department contained some details in this regard. It is submitted that this allegation was found to be incorrect and was stated so by the learned Attorney General when he appeared in this Court on 17th October, 2014. This Court had also seen the appraisal report and did not find anything to link Mr. Moin Qureshi with Mr. Sinha.

25. It is also stated that in IA No. 13/2014 as well as the additional affidavit filed in support of this application it has been falsely stated that Mr. Ranjit Sinha had overruled his subordinate officers with a view to bring a closure to certain cases and this was false to the knowledge of Mr. Prashant Bhushan and Mr. Kamal Kant Jaswal.

26. Significantly, in paragraph 6 of the application (that is Crl. MP No. 387 of 2015) Mr. Sinha has adverted to the contents of paragraph 9 of IA No. 13/2014, wherein it has been stated that Mr. Sinha met some accused persons in some prominent cases including the Coal Block Allocation case without the investigating officer being present. While adverting to this, Mr. Sinha states in paragraph 6 of the application as follows:

That it has wrongly been averred in para 9 that Shri. Sinha (Former Director, CBI) repeatedly overruled the Investigating Officers and forced them not to register FIRs/RCs in cases where PEs had been registered. It has been further wrongly averred that Shri Sinha forced the officials to file closure reports in cases where FIR's has already been registered.

27. It is noteworthy that Mr. Sinha does not deny that he met some accused persons in the Coal Block Allocation case without the investigating officer being

present.

Submissions and discussion

28. We heard Mr. Prashant Bhushan for Common Cause, Mr. Amarendra Saran, learned senior Counsel for the CBI and Mr. Vikas Singh, learned senior Counsel for Mr. Ranjit Sinha in considerable detail over a few days.

29. We are of the opinion that it is not at all necessary for us, nor is it advisable at this stage, to enter the thicket of allegations made by Common Cause with regard to the investigations relating to the Dardas or the alleged attempt by Mr. Ranjit Sinha to scuttle the investigations with regard to one or more of the accused persons in that case. What is of greater importance and what has caused us considerable concern is that neither Mr. Ranjit Sinha nor the CBI denies that Mr. Ranjit Sinha had met some persons, including the Dardas, who are accused of criminality in the Coal Block Allocations case without the investigating officer or the investigating team being present.

30. On the contrary, it is argued on behalf of Mr. Ranjit Sinha that it is his job to meet the accused persons and to get their point of view before taking a final decision in the matter of their criminality. It is submitted that there is no wrongdoing if he as the Director of the CBI meets some accused persons so that if they are innocent, they should not unnecessarily and without proper justification be subjected to a criminal prosecution.

31. We need not comment on the opinion of Mr. Ranjit Sinha expressed through his learned Counsel Mr. Vikas Singh except to say that even if Mr. Sinha is right, there cannot at all be any justification for him to meet any accused person in a criminal case where investigation is underway, without the investigating officer being present, whether it is in his office or as alleged by Mr. Prashant Bhushan, at his residence and that too, allegedly, several times including late at night. If at all Mr. Sinha as the Director of the CBI had to meet any accused person for obtaining his point of view on the allegations against him, he should have done so in the presence of the investigating officer or the investigating team. The fact that Mr. Sinha admittedly met some accused persons in the absence of the investigating officer or the investigating team is itself a cause for concern.

32. There is a very high degree of responsibility placed on an investigating agency to ensure that an innocent person is not subjected to a criminal trial. This responsibility is coupled with an equally high degree of ethical rectitude required of an investigating officer or an investigating agency to ensure that the investigations are carried out without any bias and are conducted in all fairness not only to the accused person but also to the victim of any crime, whether the victim is an individual or the State.

33. In *Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi)*, AIR 2010 SC 2352 : (2010) 4 JT 107 : (2010) 4 SCALE 1 : (2010) 6 SCC 1 : (2010) 4 SCR 103 : (2010) 3 UJ 1650 this Court made the following observations with regard

to the entitlement of an accused to a fair investigation:

In the Indian criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in the world. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India.

34. Similarly, in *Manohar Lal Sharma Vs. The Principal Secretary and Others*, (2014) 1 AD 73 : AIR 2014 SC 666 : (2014) 1 CCR 196 : (2014) CriLJ 1015 : (2014) 1 Crimes 16 : (2014) 1 JCC 282 : (2014) 1 JT 105 : (2014) 1 RCR(Criminal) 370 : (2013) 15 SCALE 305 : (2014) 2 SCC 532 : (2014) 1 SCJ 441 this Court observed that investigations have to be fair, impartial and uninfluenced by external influences. It is stated as follows:

A proper investigation into crime is one of the essentials of the criminal justice system and an integral facet of rule of law. The investigation by the police under the Code has to be fair, impartial and uninfluenced by external influences. Where investigation into crime is handled by CBI under the DSPE Act, the same principles apply and CBI as an investigating agency is supposed to discharge its responsibility with competence, promptness, fairness and uninfluenced and unhindered by external influences.³

35. In the present case, the contention of the learned Counsel appearing on behalf of Mr. Sinha is that there is nothing to indicate that his client tried to scuttle the investigations and the reference to the investigations in the case of the Dardas is completely misplaced. It was contended by learned Counsel appearing for the CBI as well as learned Counsel for Mr. Ranjit Sinha that a prayer for an investigation by an SIT having not been accepted by this Court in the application made in the 2G spectrum case, the same request in this application should not be accepted.

36. As mentioned above, it is not necessary for us to examine whether the investigation into the case of the Dardas was in any manner influenced by Mr. Sinha at any point of time. What is of importance is that as justice must not only be done but it must also appear to have been done, similarly, investigations must not only be fair but must appear to have been conducted in a fair manner. The fact that Mr. Sinha met some of the accused persons without the investigating officer or the investigating team being present disturbs us with regard to the fairness of the investigations. This is all the more so if we keep in mind the fact that in the 2G scam investigations, this Court had concluded in its order dated

20th November, 2011 that Mr. Ranjit Sinha should not interfere in the investigation and prosecution of the case relating to the 2G spectrum allocation and to recuse himself from the case. That an SIT was not ordered in the 2G spectrum case is not relevant. A view was taken that Mr. Sinha should be directed to not interfere in the investigations in that case and that, coupled with his meeting accused persons in the Coal Block Allocation case without the investigating officer being present, is enough to persuade us that some further inquiry is necessary to ensure that the investigations have been fair in the coal block allocation cases where Mr. Sinha has had one or more meetings with one or more accused persons.

37. Learned Counsel appearing for the CBI passionately submitted that any adverse order that we may pass in this regard would irreparably damage the credibility of the CBI. In our opinion this argument is fallacious. If an independent inquiry shows that the CBI has acted fairly, it will enhance its institutional credibility and its image. On the other hand, if the independent inquiry shows that Mr. Ranjit Sinha managed to influence some specific investigations in the Coal Block Allocations case, it will serve the larger public interest and will enable the CBI to take appropriate corrective and remedial measures. Either way, through an independent inquiry the CBI will be the beneficiary rather than the loser.

38. While opposing IA No. 13/2014 and supporting CrI. MP No. 387/2015 Mr. Vikas Singh relied upon *Perumal Vs. Janaki*, (2014) AIRSCW 993 : (2014) CriLJ 1454 : (2014) 2 JT 180 : (2014) 1 RCR(Criminal) 851 : (2014) 1 SCALE 406 : (2014) 5 SCC 377 : (2014) 3 SCJ 152 to contend that when a palpably false statement is made for extraneous reasons, it is an appropriate case for the exercise of jurisdiction Under Section 195 of the Code of Criminal Procedure 1973 (for short the Code).

39. Similarly, reference was made to *Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another*, AIR 2011 SC 1989 : (2011) 6 JT 379 : (2011) 5 SCALE 624 : (2011) 7 SCC 639 : (2011) 3 UJ 1977 : (2011) AIRSCW 4473 where also this Court observed that it is a settled proposition of law that a false statement made in Court or in the pleadings to intentionally mislead the Court and to obtain a favourable order amounts to criminal contempt as it tends to impede the administration of justice.

40. On the other hand, Mr. Prashant Bhushan referred to *Indirect Tax Practitioners Association Vs. R.K. Jain*, AIR 2011 SC 2234 : (2010) 179 ECR 111 : (2010) 256 ELT 641 : (2010) 8 JT 523 : (2010) 8 SCC 281 : (2010) 7 UJ 3523 : (2011) AIRSCW 3252 : (2010) 6 Supreme 289 with regard to the growing acceptance of the phenomenon of a whistle blower. This Court observed that the Respondent in that case was the whistle blower who had tried to highlight the malfunctioning of an important institution established for dealing with cases involving the revenue of the State and there was no reason to silence such a person by invoking the contempt powers of the Court under the Constitution or

the Contempt of Courts Act, 1971.

41. Though the submissions made by Mr. Sinha's learned Counsel on the contents of his application were limited, the oral submissions spread over a larger canvas. It is submitted by Mr. Vikas Singh that Mr. Prashant Bhushan, Common Cause and Mr. Kamal Kant Jaswal have not only committed perjury but are also guilty of contempt of Court and additionally Mr. Prashant Bhushan has violated the provisions of the Official Secrets Act, 1923 by placing on record the official notes with regard to the case of the Dardas. We have considered Mr. Sinha's application from all these angles.

42. In our opinion, the submissions made by Mr. Vikas Singh in this regard do not deserve acceptance. It is true that this Court had required the Director, CBI to ensure, by its order dated 8th May, 2013 that the secrecy of the inquiries and investigations into the allocation of coal blocks is maintained. However, if somebody accesses documents that ought to be carefully maintained by the CBI, it is difficult to find fault with such a whistle blower particularly when his or her action is in public interest. It is another matter if the whistle blower uses the documents for a purpose that is outrageous or that may damage the public interest. In that event, it would be permissible for this Court or an appropriate Court to take action against the whistle blower, if he or she is identified. However, the present case is not of any such category. The whistle blower, whoever it is, acted purportedly in public interest by seeking to bring out what he or she believes is an attempt by Mr. Ranjit Sinha to scuttle the investigations into the affairs of the Dardas or others in the Coal Block Allocation case. As mentioned above, we are not considering whether the file notes actually disclose an attempt by Mr. Sinha to scuttle the investigations. All that is of relevance is whether the disclosure by the whistle blower was mala fide or not. We are of the opinion that the disclosures made by the whistle blower were intended to be in public interest.

43. In these circumstances, it is difficult to hold that Mr. Prashant Bhushan or Common Cause or Mr. Kamal Kant Jaswal had any intention to mislead this Court in any manner, nor do we agree that they have perjured themselves. The file notes speak for themselves and any interpretation, even an allegedly twisted interpretation said to have been given to them, cannot fall within the realm of perjury.

44. As far as the allegation that there has been a violation of the provisions of the Official Secrets Act, 1923 is concerned, we are of the opinion that the file notes in this case cannot be described as an "official secret" for the purposes of prosecuting Mr. Prashant Bhushan.

45. Accordingly, Criminal Misc. Petition No. 387 of 2015 is dismissed.

46. With regard to IA No. 13 of 2014, since we have held that it was completely inappropriate for Mr. Ranjit Sinha to have met persons accused in the Coal Block Allocation case without the investigating officer being present or without the

investigating team being present, it is necessary to look into the question whether any one or more such meetings of Mr. Sinha with accused persons without the investigating officer have had any impact on the investigations and subsequent charge sheets or closure reports filed by the CBI. We require assistance in this matter, particularly for determining the methodology for conducting such an inquiry. For rendering assistance to us in this regard, notice be issued to the Central Vigilance Commission returnable on 6th July, 2015.

1Civil Appeal No. 10660 of 2010 Centre for PIL v. Union of India 2 Center for PIL Vs. Union of India (UOI) 3Paragraph 33 of the Report