
(2010) 08 DEL CK 0196

In the Delhi High Court

Case No : Writ Petition (C) 2442 of 2010

Dr. Subramanian Swamy

APPELLANT

Vs

Dr. Manmohan Singh and Another

RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 08 DEL CK 0196

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Subramanian Swamy, Petitioner in person with Dr. Roxna Swamy and Mr. P.N. Mago, for the Appellant; Gopal Subramaniam, S.G. and Mr. A.S. Chandio, ASG with Mr. Jatan Singh, Atul Nanda and Mr. Ritesh Kumar, Advocate for R-1, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner, Dr. Subramanian Swamy, in this Public Interest petition preferred under 1. Article 226 of the Constitution of India after stating his antecedents as regards his interest in the public field, which basically relates to good governance and a society, free from corruption and his contribution in the field of politics, economics and literature which are germane to the society, has prayed to issue a writ of mandamus, commanding the respondent no. 1 to pass an order granting the petitioner the requisite sanction to prosecute and further to issue a direction in the nature of mandamus to the said respondent to pass appropriate order on the demand of the petitioner for grant of requisite sanction to prosecute and pass such other order/orders as may be deemed fit and proper in the facts and circumstances of the case. Dr. Subramanian Swamy, by highlighting the contentions raised in the petition, submitted with assiduousness that when a citizen has approached with the relevant material to seek sanction to prosecute the respondent no. 2, it is obligatory on the part of the first respondent either to grant the same or refuse the same. It is urged by him that the respondent no. 1 cannot maintain silence for the simple reason a citizen

has a right to prosecute a public servant in law and by such inaction his right to protect the society gets curtailed, smothered and crippled. He has invited our attention to the Constitution Bench's decision rendered in K. Veeraswami Vs. Union of India (UOI) and Others, and the guidelines issued by the Central Vigilance Commission on 12th May, 2005.

2. Pyramiding the aforesaid submission, Dr. Subramanian Swamy submitted that a citizen has expectation from the highest authority to get an appropriate reply but when nothing has been done despite expiration of one year and a half, the anguish reaches its pinnacle and hence, this Court should interfere in exercise of its inherent jurisdiction and issue a command to the first respondent to take a decision in the matter.

3. Mr. Gopal Subramaniam, learned Solicitor General of India, in opposition to the submission put forth by Dr. Subramanian Swamy, urged that a communication was sent to the petitioner by the competent authority of Government of India in the Department of Personnel and Training (in short "DOPT") indicating that the Central Bureau of Investigation (for short "CBI") has registered a case on 21st October, 2009 and the investigation is in progress.

4. It is proposed by the learned Solicitor General that when the first respondent has directed for investigation by the CBI and the investigation is in progress, conceptually, it is impermissible to take a decision on the application of the petitioner either to grant or refuse the sanction because that may in the ultimate eventuate affect the process and progress of the investigation. Mr. Gopal Subramaniam has drawn our attention to the order dated 25th May, 2010 passed by the Division Bench of this Court in W.P.(C) 3522/2010 (Centre for Public Interest Litigation and Ors. Vs. Union of India and Ors.) whereby this Court after taking into consideration the decision in Kunga Nima Lepcha and Others Vs. State of Sikkim and Others, declined to monitor the investigation.

5. It is further submitted by the learned Solicitor General that in the said case, prayer related to the present lis in question and once this Court has declined to monitor the investigation, any direction or command to the first respondent to take a decision on the application preferred by the petitioner would result in an anomalous situation which the law does not countenance. To appreciate the rival submissions raised at the Bar, we have carefully perused the allegations made in the writ petition and the documents brought on record. It is not in dispute that the petitioner has asked for sanction to prosecute the respondent no. 2 from the first respondent. It is submitted by Dr. Subramanian Swamy that his application was earlier and, therefore, propriety commanded the first respondent to take a decision thereon first.

6. As is evident, on 19th March, 2010, the petitioner was sent a communication from the office of DOPT. For the sake of completeness, we think it apt to reproduce the said communication in its entirety:-

Please refer to your letters dated 31.10.2009, 8.3.2010 and 13.3.2010

addressed to the Prime Minister regarding sanction for prosecution in respect of Shri A. Raja, Minister of Communication and IT.

7. The Central Bureau of Investigation has registered a case on 21.10.2009 against unknown officers of DOT, unknown private persons/companies and others. The case is still under investigation. The issue of grant of sanction for prosecution would arise only after perusal of the evidence collected by the investigation agency and other material provided to the competent authority. It would, therefore, be premature to consider sanction for prosecution at this stage.

8. The question that emanates for consideration is whether, at this stage, when the investigation by the CBI is in progress and this Court had earlier declined to monitor the same by order dated 25th May, 2010, which has been pressed into service by the learned Solicitor General of India, it would be appropriate to direct the respondent no. 1 to take a decision as regards the application submitted by the petitioner seeking sanction to prosecute. In our considered opinion, when the matter is being investigated by the CBI, and the investigation is in progress, it would not be in fitness of things to issue a mandamus to the first respondent to take a decision on the application of the petitioner.

9. At this juncture, on a query being made from the learned Solicitor General whether the petitioner can send the material collected by him or to be collected by him to the competent authority of the CBI who is incharge of the investigation or any other higher authority, we must fairly state, Mr. Gopal Subramanian acceded to the same stating that the investigating agency would have no objection to receive the documents from the petitioner and the investigating authority may, if need be, take aid of the same for the purpose of investigation so that the concept of investigation is more strengthened and is fossilized, as apprehended by the petitioner. The petitioner may take recourse to the same. In view of the aforesaid, we are not inclined to interfere with the writ petition and, accordingly, the same stands dismissed without any order as to costs.