
(1998) 08 AHC CK 0089
In the Allahabad High Court
Case No : Writ Petition No. 21425 of 1996

Indra Pal Singh Tomar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 20-08-1998

Acts Referred:

Citation : (1998) 08 AHC CK 0089

Hon'ble Judges : Palok Basu, J and R.K.Mahajan, J

Final Decision : Dismissed

Judgement

Palok Basu, J.—This writ petition was filed before this Court by the petitioner, Indra Pal Singh Tomar, praying for quashing of the order of the State Government suspending him from the post of Regional Ayurvedic and Unani Officer, Muzaffarnagar. This, in due course, indicated that several writ petitions have been filed as also petitions under Section 482, Cr. P.C., have been filed, not only at Allahabad but also at Lucknow Bench of this Court, which related to the alleged excess withdrawal of about Rs. 48 crores from State Exchequer without budgetary allocation. It also came to light the even an FIR has been lodged by the State Government on 3111995 through Sri Yashwardhan Sinha, the then Deputy Secretary, Medical & Health Department of the State but neither any investigation has proceeded nor any tangible result from the investigation was made known till then. As a result the CBI was thought as the only fit investigating agency to look into the matter and, therefore, the need of investigation by the CBI arose. Necessary directions were issued by the Court and ultimately the State Government came out with necessary notification directing the investigation of that FIR dated 3111995 and all other connected matters to be entrusted to the CBI for investigation. Consequent upon those notifications the CBI registered the case on 681996 and for all practical purpose the word "Ayurved Scam" would now refer to the FIR that has been registered by the CBI as Case Crime No. 32A of Police Station Hazratganj, Lucknow.

2. The State of U.P. then made an application before Hon'ble the Chief Justice for

directing a Bench of not less than two Judges to be constituted which may hear the cases at Allahabad and also at Lucknow whether they be Criminal or Civil in nature.

3. The Hon"ble the Chief Justice passed the following order:

"The pending cases, list of which has been furnished with application and other connected cases pending, or which may be filed, will be listed before the Division Bench presided over by Hon"ble Palok Basu to be heard at respective places of filing.

Sd/Chief Justice 3171996."

4. While hearing of the petitions at Lucknow and Allahabad began, the CBI in its turn went on with the investigation and submitted its report from time to time to the the Court which was seized with the matter. By a detailed judgment running into 161 pages this Court dismissed the writ petitions and 482 application praying for quashing of the chargesheet or the disciplinary proceedings and issued necessary direction for completion of the Investigation as also the disciplinary proceedings against all the employees who were involved in those cases. It may be pointed out that the machination of the then Director of the Ayurvedic and Unani Directorate, U.P., Lucknow with the help and connivance of the various other officers posted in the State of U.P. or various institutions hospitals and other Branches of the Directorate have been noticed by the CBI. The investigation report submitted by the CBI from time to time indicated that some chargesheets were being filed by them while the investigation in the case was being continued in order to bring all the accused to book who are connected or may be connected with the alleged offences.

5. During the course of investigation it was revealed by the CBI that a Minister, namely, Sri Balram Yadav and an IAS officer, namely, Sri R.K. Sharma were involved in the fraudulent withdrawal of the amount from the State Exchequer. In this connection it may be pointed out that had S.A. T. Rizvi, the then Principal Secretary Finance not issued restraint order dated 2631994 an amount equivalent to the amount alleged above might also have been withdrawn on allegedly false will etc.

6. In the report of the CBI dated 25111996 and 711997 and also the contents of some other report submitted to the Court it tantatively appears that the CBI had collected all materials against those two accused also. Consequently, a chargesheet was filed by the CBI showing these two as accused (i.e. Sri Balram Yadav and Sri R.K. Sharma) with other accused.

7. This chargesheet was filed before the Special Judge, Lucknow on 2521997.

8. It transpired that sanction from neither the State Government nor the Central Government were in existence and consequently the CBI was apparently making efforts to obtain those sanction orders from the respective Governments. In so far as the prosecution of an IAS Officer is concerned, sanction is to be obtained

from the Central Government and it is admitted that their sanction for prosecution is directly looked into by the Prime Minister of India. The State Government had initially refused permission to Shri Balram Yadav as well as Shri R.K. Sharma but later on granted sanction to these two accused also. It may be mentioned that several other accused who are State employees, are being prosecuted on the strength of sanction order of the State Government. In one of the reports the CBI intimated the Court that the application for sanction of the prosecution of Shri R.K. Sharma, IAS the then Secretary was pending consideration with the Central Government. Naturally, observations came to be made by this Court that looking at the gravity of the allegations and the number of accused who were to be prosecuted it should not take much time for Central Government to take decision on the request of the CBI to grant sanction to Shri R.K. Sharma.

9. Simultaneously, the Court is also concerned with the pace of the trial in Ayurved Scam cases as it is admitted to the parties that a very large number of documents has been collected by CBI. Moreover, the number of accused is 53 who are facing trial and some may yet have to be included in the list of accused at the time of filing of the chargesheet by the CBI. Consequently, the State Counsel was requested to tell how can a Court cope up such a huge trial if the Special Judge concerned is to deal with the several cases. It is also to be mentioned here that several accused are inside Jail and have not yet been released and, therefore, the Court was fully conscious of the fact that the trial against all the accused must be completed at the most expeditious possible manner. Likewise, the CBI also could not go on indefinitely investigation the matter particularly when some chargesheet have also been filed by them and a time bound direction was bound to issue to it to complete this investigation.

10. In effect now, therefore, this Court is concerned with only three aspects. First, the matter relating to the CBI's prayer for Central Government's sanction for prosecution of Shri R.K. Sharma the then Secretary, Medical Health Department. Second, the completion of the investigation by the CBI. within a time frame. Third, making of special efforts for expeditious trial of the accused chargesheet by CBI.

11. Before proceeding further it may be pointed out that the CBI has in its report dated 621997 referred to the alleged activity of several Treasury Officers but none of them has been prosecuted by the CBI in this case. During the course of arguments, it was pointed out that some disciplinary proceedings have been recommended. This Court should not go into this issue at this stage any longer because whether or not evidence was found sufficient is within the realm of the CBI but at same time it is awfully sorry that persons who have been appointed to check illegal withdrawals from the treasuries and still have permitted huge withdrawals without budgetary allocations, have been allowed to go out of the prosecution net and are not include in the charge sheet for alleged want of evidence. The budgetary allocation should be better known to the Treasury

Officers and if not known, they ought to have enquired from the respective Department. They were duty bound to ensure that no amount is withdrawn over and above the said budgetary allocation. In the CBI reports there are allegations that even the vigilance which was normally expected from the Officials of the Accountant General, U.P. was non-existent. These are matters which have got to be taken up by the Departments concerned at the appropriate level for fixing responsibility so that recurrence of excessive withdrawal beyond budgetary allocation is no more possible. Let it be emphasised that lack of financial control by the Government on its functionaries and employees who have the power to make withdrawal from State exchequer would jeopardise the Country's economic development. The Prime Minister and his Cabinet members at the Centre and the Chief Ministers and their Cabinet members in the States seem to be manacled by the Constitutional provisions to enforce financial discipline and fiscal control.

12. Coming now to the question of sanction of the prosecution of Shri R.K. Sharma the report dated 7/11/1997 intimated the Court that Government of India by its letter dated 7/11/1997 refused to grant sanction of prosecution of Shri R.K. Sharma, a copy of the letter has been annexed. It may be mentioned here that anything which is stated in the said letter can and should not be referred to about the merits because the matters are subjudice somewhere and one does not know what the fate of the accused involved in those cases and those who may yet be involved in those cases, is going to be. Suffice it to say that it is admitted position between the parties that when the matter of sanction to Shri R.K. Sharma went to the Prime Minister, who is seized with matters relating to grant of sanction to an IAS Officer as he is in charge of the Department of Personnel and Training, the Prime Minister had expressed the desire of having the opinion of the learned Attorney General. The Attorney General did not give his opinion. The matter was sent to the Solicitor General. He also did not give his opinion and then the matter went to one of the Additional Solicitor General who is said to have extended his opinion for refusing sanction for the prosecution of Shri R.K. Sharma. According to contents of the letter, the sanction was not to be accorded because:

"The sanctioning authority is, therefore, obliged to satisfy itself whether on the facts alleged there has been an abuse or misuse of the Office held by the public servant. Needless to say that at this stage the sanctioning authority proceeded as if the allegations have been proved to be true and there is no scope for evaluating the evidence. If however the sanctioning authority comes to a conclusion that even if the facts alleged are assumed to be true no offence is made out the authority is entitled to refuse the sanction.

"It is also seen from this case that Shri R.K. Sharma functioned as Secretary, Medical Health, Government of India for a period of two and half months.....

"Therefore, no case is made out for sanction to Shri R.K. Sharma for the alleged offence under Section 13 (2) read with Section 13(1)(d) of the Prevention and Corruption Act, 1988 and that no such case is sustainable on the report of the

CBI."

13. Before proceeding with this matter further it may be pointed out that the State Government had already granted sanction to Shri R.K. Sharma, as well as to the then Minister as quoted above on the basis of same chargesheet material which was collected by CBI.

14. Shri U.K. Dhaon, learned senior Standing Counsel for the Union of India has filed an affidavit of Shri Arvind Verma, Secretary Department of Personnel and Training, Government of India, New Delhi. This has been done in pursuance of this Court's directions to enable it to come to a correct conclusion as to the procedure and processing of the matter relating to grant of sanction to Shri R.K. Sharma. The relevant paragraphs in the said affidavit are as follows:

"Para 2 "That I have gone through the order dated 3071998 of the Hon"ble High Court wherein a direction was given for filing an affidavit indicating the steps which have been taken in accordance with the directions of the Prime Minister relating to the sanction of prosecution of the IAS Officer concerned.

?Para 2. That when the matter was referred to the Attorney General for his opinion by the Ministry of Law & Justice, as per the direction of the Prime Minister i.e. the Competent Authority, he (the Learned Attorney General) expressed the desire that the matter may be referred to some other Law Officer. Thereupon, reference was made to the Learned Solicitor General for his opinion, who also expressed his inability to give his opinion in this case as he was engaged in two important and sensitive cases, and, therefore, it was suggested by him that the file may be given to Shri K.N. Bhatt, Additional Solicitor General for his opinion.

Para 4. That reference was thereafter made to Shri K.N. Bhatt, Additional Solicitor General seeking his opinion in the matter. The question of grant of sanction for prosecution in this case was submitted to the. Competent Authority i.e. the Prime Minister as Minister incharge of the Department of Personnel & Training, who took into account the legal opinion while deciding to refuse grant of sanction for prosecution of Shri R.K. Sharma under Section 19(1) of the PC. Act, 1988."

15. It may be also be mentioned here that being dissatisfied with the stand of the Union of India the CBI itself filed a Review application, or the reappraisal application, before the Central Government. Detailed grounds were taken by the CBI as to why the sanction

must be accorded to the IAS Officer Shri R.K. Sharma. Things which were relevant and not considered or things which were not relevant considered, were specifically referred to in the reappraisal application moved by the CBI. This review application or reappraisal application was also rejected by the Government of India. Third application which was again moved by the CBI for reconsideration of the matter likewise did not meet with any success and the CBI

was informed that since there was no new material or new evidence collected by the CBI there was no ground for reappraisal of the review application.

16. The Court, therefore, heard Shri U.K. Dhaon at length. The Court further wanted to know as to whether the procedure can be said to have been followed in accordance with law when the Prime Minister wanted the opinion of the Attorney General himself and instead, the opinion of an Additional Solicitor General is forwarded to him.

17. Shri Dhaon emphatically argued three points against the aforesaid query of the Court. The first and the foremost was that there is no one to challenge refusal of the sanction and, therefore, this Court has no power to oversee the procedure or its processing. Second, the Hon"ble Supreme Court had taken the view as reports in the decisions of *Union of India & Ors. v. Sushil Kumar Modi & Ors.*, (1977) 4 SCC 770 and *Mansukhlal Vithaldas Chouhan v. State of Gujarat*, (1977) 7 SCC 622 and therefore, since this Court cannot direct grant of sanction the exercise of power by this Court may end in futility. Third, that since the chargesheet had already been filed in the Court of the Special Judge, monitoring should have ended and this Court may not go now into the issue of grant of sanction because the fact is that the Central Government has refused sanction to Shri R.K. Sharma.

18. The first argument of Shri Dhaon requires to be dealt with by referring to the Constitutional provisions. Article 76 of the Constitution reads as follows:

"76. Attorney General for India.(1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney General for India.

(2) It shall be the duty of the Attorney General to give advice to the Government of India upon such legal matters and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney General shall have right of audience in all courts in the territory of India.

(4) The Attorney General shall hold office during the pleasure of the President and shall receive such remuneration as the President may determine."

19. SubArticle (2) of Article 76 makes it incumbent on the learned Attorney General to give advice to the Government of India upon such legal matters as may from time to time be referred or assigned to him by the President. It is apparent that the Prime Minister wanted the opinion of the learned Attorney General.

20. In times when excess withdrawal from the Government Exchequer are heard here and there and one after the other "Scam" is published by the news media

inasmuch as the Government funds are allegedly taken out of the public exchequer without any lawful authority, the public interest becomes supreme in the mind of the courts and if Article 226 would not bring in such empowerment to examine whether or not the Constitutional provisions have been followed, it will be difficult to uphold the rule of law. Even when the Prime Minister has sought the opinion of the Attorney General perhaps only because of the public interest involved only his opinion becomes relevant. It is not in all matters that the opinion of the Attorney General may be necessary and consequently when the highest in the Executive tries to obtain the opinion of the highest in the legal field both must honour each other. An opinion of any lawyer may be as competent as that of the Attorney General but nonetheless this will not be complying with the Constitutional requirement and, therefore, subsequent action thereafter cannot be upheld as being within the frame of law.

21. The Hon'ble Supreme Court has by now delineated the power of this Court public interest litigations or while monitoring matters, and, therefore, this Court would not like to go into the decisions. It would only record here that had these Constitutional provisions been followed by the department of personnel and the opinion of the Attorney General would have been obtained that should have brought an end to the entire controversy. In the circumstances the Prime Minister's requirement of obtaining opinion of the Attorney General having remained unfulfilled, the steps have to be retraced from that stage.

22. It, therefore, follows that the second argument and the third argument of Sri U.K. Dhaon do not arise at all because whether or not sanction it to be granted or refused shall be decided only in the term of the Constitutional provisions of law.

23. There was one argument advanced by Shri Dhaon which was to the effect that it does not make any difference if the Prime Minister chose to act on the opinion of the Additional Solicitor General because it is ultimately he, that is the Prime Minister, who is the authority or sanctioning authority for that matter and so long as he is satisfied with the opinion of Additional Solicitor General, the Court may not insist upon Attorney General's opinion to be passed on to the Prime Minister as required by the Prime Minister earlier.

24. It is now to be emphasised that a thing which requires to be done in a particular manner must either be done in that manner or not at all. It also does not require to be repeated here that a procedure which lays down a mandatory duty on the highest officer in the legal field must feel obliged to follow that mandate of the Constitution. In some matters under some business rule the Attorney General may hand over the matter to some of the other Law Officers. The Attorney General may be empowered to do so in some routine matters but since the matter involving prosecution of an IAS officer is of paramount importance for safeguarding of administration of law and machinery of law in this Country, it is the Attorney General alone who was competent to give his opinion in this case as already required by the Prime Minister of India. A writ has

therefore, to go to the record maintained in the department of Personnel and Training relating to the sanction of prosecution of Sri R.K. Sharma, IAS quashing the orders existing after the specific order of the Hon'ble the Prime Minister of India seeking the opinion of the learned Attorney General of India.

25. Let this be noted here without any hesitation that it is a matter of history that the established bureaucracy have helped in getting the Independence of India from the domain of foreign country and the administration of law and order is largely due to effective and honest bureaucracy that this Nation has inherited. The Secretaries in various Ministries have done utmost to maintain the highest tradition envisaged by the Constitution and there may be one or two observation here and there who may be proved to have erred. But the entire bureaucratic set up has been always conducive to better administration and execution of Constitutional provisions.

26. This is how the arguments of Sri Dhaon are negated and necessary directions will be issued towards the end of this order which is being dictated in open Court.

27. Now comes up the second point for discussion. The CBI has made efforts to complete the investigation in time. It is true that efforts were sincere and genuine and the court will be failing in its duty if it does not record appreciation for the enormous amount of labour and sincerity that the CBI has put in the investigation of this case right from the day it was entrusted to them, except of course the two matters relating to the Treasury Officers and participation of some of the officials in the A.G. Office.

28. The Ayurvedic Scam relates to the year, 1993/94. The FIR was lodged on 31/11/1995. The CBI registered the case on 3/8/1996. This Court passed detailed judgment on 16/10/1996. Yet the investigation in some respects is not complete. Consequently on the last date this Court has directed the CBI to complete the entire investigation within 45 days. The latest report of the CBI indicates that they have deputed four more SubInspectors and several other personnel to go on with the investigation so that the time allowed by the Court is honoured and the final investigation report is filed by the dead line fixed by this Court.

29. After considering the arguments advanced by Sri R.S. Jamwar on the last occasions and the arguments advanced by Sri A.K. Srivastava as inspected by Sri N.P. Tewari, the Investigating Officer and having reconsidered the matter that all efforts have been put by the CBI by now, it is hereby directed that the CBI shall complete all formalities of investigation and file the chargesheet or the final report as the case may be, before the trial Court on or before the 8th of October, 1998. In fact this extension of time i.e. beyond the 45 days as ordered on the last occasion has been made on the fervent appeal that was extended by Sri A.K. Srivastava on the instructions conveyed in open Court through Sri M.P. Tiwari the Investigating Officer. It may be mentioned here that since the monitoring is now about to be withdrawn there may not be any occasion for this Court to again go

into the steps of investigation which the CBI may be taking hereafter. Consequently it is hoped that the CBI would honour the commitment made by the Investigating Officer and its Counsel today in Court that all investigation and filing of its reports and documents before the Court will on or before the 8th October, 1998.

30. The last point to be considered now is about the establishment of the Special Court. The State Government wrote a letter to the High Court for approval of appointing of Special Judge for trying the Ayurvedic Scam cases. The High Court has replied in the affirmative. Looking to the statements and the arguments advanced by Sri R.K. Singh, learned Additional Advocated General on the last occasion and Sri R.K. Verma, learned Additional Chief Standing Counsel today it appears appropriate to direct that the State Government shall formulate all steps to finaise the appointent within 15 days from today. In fact this order of creating the Court within 15 days has been passed on the special request made by Sri A.K. Verma, though the Court wanted the creation to be done still early.

31. In this connection it is hereby directed that the posts of Reader, Stenographer, Orderly, Sadar Munsarim, Suit Clerk, Sessions Clerk, Copyist and Peons shall be filled in by deputation for a period of one year. Infrastructural facility and the budgetary sanctions etc. may be obtained in the meantime and regular selection for new appointees may be made during this period. The steps to appoint the deputationist should begin within three days.

32. The District Judge, Lucknow is hereby directed to provide accommodation to the Special Judge in the new Court building and all other facilities including the use of library etc. to the Special Judge so that the trial of the accused is not delayed even for a single day.

33. Anything which begins must end somewhere. The monitoring came all of a sudden by way of a necessity. The facts detailed above would leave no manner of doubt that the only anxiety which the court has been obsessed was how is it that in our country, governmental money which is nothing but the poor tax payers money and their contribution to the State Exchequer, shall be devoured by some allegedly misguided citizens ? And, they should be brought to book for trial in accordance with law so that in a democratic country like ours, the rule of law is upheld.

34. In view of the aforesaid discussion, apart from the two directions given above requiring completion of investigation by CBI and establishing a Special Court for trial of Ayurved Scam cases, the order of the Central Government refusing CBI's application to accord sanction to prosecute Sri R.K. Sharma and again refusing to review the same on the two occasions, are quashed. A certiorari writ, through a copy of this judgment will go to the record maintained in the Office of Personnel in the matter of sanction of Sri R.K. Sharma quashing all notings and orders subsequent to the order of the Hon''ble Prime Minister of India requiring the opinion of the learned Attorney General of India on the

matter. The respondents shall now follow the directions of the Prime Minister as contained in the file and refer the matter for opinion of the learned Attorney General as early as possible preferably within three weeks from today.

35. Before parting, the Court records, sincere appreciation for the assistance rendered by Sri R.N. Trivedi, the then Advocate General, U.P., now Addl. Solicitor General, Sri R. K. Singh, learned Addl. Advocate General assisted by Sri A.K. Verma, learned Addl. Chief Standing Counsel State of U.P., Sri R.S. Jamwar, Special Counsel, CBI assisted by Sri AK. Srivastava, Public Prosecutor, CBI and Sri U.K. Dhaon, Senior Standing Counsel, Union of India. The Officers of the department of the CBI and the respective departments who have been regularly coming and assisting the Court through their Counsel also require special mention.

36. It maybe usefully mentioned here that Mahatma Gandhi had written is Satyagraha:

"India was once a golden land, because Indians then had hearts of gold. The land is still the same but it is a desert because we are corrupt. It can become a land of gold again only if the base metal of our present national character is transmitted into gold....."

37. Swami Vivekanand has exhorted the countrymen by saying:

"This is the motherland of philosophy, of spirituality and of ethics, of sweetness, gentleness and love. These still exist and my experience of the world leads me to stand on firm ground and make the bold statement that India is still the first and foremost of all the nations of

the world in these respects.....It is the same India which has withstood the shocks of centuries, of hundreds of foreign invasions, of hundreds of upheavals of manners and customs. It is the same land which stands firmer than any rock in the world, with its undying vigour, indestructible life. Its life is of the same nature as the soul, without beginning and without end, immortal ; and we are the children of such a country."

38. Having referred to the guidance available from Mahatma Gandhi and Swami Vivekanand the exercise of this Court in the instant matter should stop here with the fervent hope that the citizens of this country will rise upto the occasion and would do nothing which may make the rule of law tremble. Let the hard earned independence be not lost the lack of the citizens vigil and circumspection.

39. However, no word in this judgment shall be interpreted in any of the legal proceedings regarding Ayurved Scam that are to follow in the courts of law or departments concerned in which any citizen is to be tried or proceeded with.

40. Let copies of this judgment be furnished within 24 hours to Sri U.K. Dhaon, Sri A.K. Verma and Sri R.S. Jamwar.

41. The Additional Registrar will send a certified copy of this judgment with a

suitable letter to Sri Arvind Verma, 1AS, Secretary, Department of Personnel and Training, Government of India, New Delhi within 24 hours with a suitable forwarding letter, for compliance with the writ contained here in.