(2003) 10 AP CK 0045

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20125 of 1996

S. Seshaiah	APPELLANT
Vs	
Government of A.P. and Others	RESPONDENT

Date of Decision : 14-10-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2004) 1 ALD 307 : (2004) 2 ALT 744

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : I. Mallikarjuna Sharma, for the Appellant; Government Pleader, for PR and RD for Respondent Nos. 1 to 4 and 6, C. sadasiva Reddy, SC for ACB for Respondent No. 5 and G. Pedda Babu, Sc for CBI, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This writ petition is filed for a writ of mandamus, directing the transfer of investigation into allegations of corrupt practices of misappropriation of funds, fraudulent transactions and other irregularities, committed in the utilization of drought aid funds in Anantapur District, from the Anti Corruption Bureau and Enforcement Department of Government of Andhra Pradesh, Respondents 4 and 5 respectively, to the Central Bureau of Investigation (CBI), Respondent No. 7.

2. The petitioner is Professor of Law in Krishna Devaraya University, Anantapur. He claims that he is the Joint Secretary of a Non-Political Human Rights Organization, devoted to the cause of the democratic and human rights of the people. The petitioner submits that Anantapur is one of the most backward, famine infested and drought affected districts in the country. According to him, funds to the tune of about Rs. 45-00 crores were released between the years 1993 and 1996, under various Schemes, to be spent in the district for implementation of the Schemes, such as, Employment Assurance Scheme, Integrated Water Development Programme, Drought Prone Area Programme,

Integrated Rural Development Programme, Desert Destruction Programme, etc. It is his case that a centralized agency was constituted, bringing into its fold the Departments of Forests, Agriculture, Fisheries, Horticulture, Sericulture, etc. He alleges that funds to the tune of several crores have been misappropriated and that most of the works for which some of the funds have been spent were not executed or were non-existent. The petitioner also alleges that when large-scale misappropriation and defalcation of funds were noticed, a semblance of enquiry was sought to be undertaken by respondents 4 and 5 and ultimately nothing had come out of it. The petitioner contends that having regard to the fact that most of the funds are allocated by the Central Government, several Officers of All India Service are involved and since there was no examination of the matter with reference to the provisions of the Prevention of Corruption Act and IPC, it is a fit case, in which investigation is required to be undertaken by the CBI.

3. On behalf of Respondents 1 to 6, the Assistant Secretary to Government, Panchayat Raj Department, initially filed a counter-affidavit. He has discussed in detail, the allegations against individual Officers relating to diversion of funds to the tune of Rs. 30-00 crores. It is stated that on noticing the large scale defalcation of funds, the State Government has decided to entrust the matter to the Director General of Vigilance and Enforcement Department, Hyderabad, the 6th respondent, for a thorough probe. It is stated that a report has been submitted by the 6th respondent and on the basis of the same, the Government has issued G.O. Rt. No. 5103, General Administration (SC-D) Department, dated 27-8-1996, framing as many as 11 charges against Sri R.Sudervadan IFS, formerly Project Director, Drought Prone Area Programme, Anantapur. It is stated that the Officer has since been placed under suspension. It is also stated that on the basis of the report submitted by the 6th respondent, the Government issued G.O. Rt. No. 443, Panchayat Raj and Rural Development (RD.II) Department, dated 17-4-1997, constituting a Committee of Officers from as many as 10 Departments.

4. So far as the request of the petitioner to entrust the investigation of the case to CBI is concerned, it is stated in the counter-affidavit that the matter can be enquired into by three Agencies viz., Vigilance and Enforcement Department (Respondent No. 6), Anti-Corruption Bureau (Respondent No. 5) and Andhra Pradesh Vigilance Commission, and as such, entrustment or transfer of the investigation of the case to the CBI is not necessary.

5. Additional counter-affidavit is filed on behalf of some respondents in December, 2002. In this additional counter-affidavit, some of the aspects covered by the 1st counter-affidavit have been repeated. It is stated that in the phase I of the enquiry conducted by the Vigilance and Enforcement Department, works relating to Forest Department were dealt with. The actions proposed against individual officers were also pointed out. A Special Cell for the purpose of administrative support to the team of officials from Vigilance and Enforcement Department is said to have been created, through orders of the Government

contained in G.O. Rt. No. 345, dated 24-2-1999. Respondent No. 6 is said to have sent its report for taking further action against 5 IAS (Indian Administrative Service) and 2 IPS (Indian Forest Service) Officers. The actions taken in respect of officers of various other departments at departmental side are also indicated. The Government Orders issued from time to time are also enclosed.

6. After the matter was taken up for hearing, a 2nd Additional counter-affidavit was filed on behalf of respondents 1 to 6. A brief statement is made as to the progress of the action against certain officials. The steps referred in this regard are mostly departmental in nature.

7. On behalf of the 7th respondent, a counter-affidavit is filed. It is stated therein that they are not aware of the various facts referred to in the affidavit filed by the petitioner. It is also pleaded that the petitioner did not allege that the investigation by Respondents 5 and 6 are unfair or biased and that no specific allegations are made against any officers of respondent Nos. 5 and 6. The 7th respondent contends that it is a very small and compact organization with limited facilities, when compared to the agencies of the Government of the State. Having said so, it is stated that in case the High Court directs investigation into the matter, it will undertake the same.

8. Sri I. Mallikarjuna Sharma, learned Counsel for the petitioner, submits that though funds to the tune of about Rs. 40-00 crores were earmarked for development of one of the most drought prone district in the country, the various officials, who are in-charge of implementation of different Schemes, have misappropriated the same. He submits that even after the acts of misappropriation have surfaced, except initiation of some proceedings on departmental side, no serious efforts are made to bring the culprits to book. He submits that the emphasis of the investigation so far undertaken by the State Agency was only from the point of view of diversion of funds and no effort was made to investigate the matter from (he point of view of identifying and prosecuting the culprits. Placing reliance on the judgments, of the Supreme Court, he contends that this is a fit case for entrustment of the investigation to the 7th respondent and for issuance of continuing mandamus to monitor the investigation from time to time.

9. Learned Additional Advocate General, appearing for Respondents 1 to 6, submits that soon after the Government came to know about the occurrence of irregularities in the matter of implementation of the Schemes, serious attempt was made to undertake a thorough investigation and to punish such of the Officers who are guilty. According to him, the delay in investigation was on account of the fact that the works were to be implemented by various departments and agencies and that it was not at an easy task. It is also his case that the gravaman of the investigation was as regards diversion of funds from one Scheme to another and in such circumstances, it cannot be said that there was misappropriation of funds. According to him. investigation and prosecution under the provisions of Prevention of Corruption Act would have arisen, if only

there existed proper material. Referring to the enquiry report submitted by the team of officials by the Government, he submits that necessary steps are being taken on the basis of the findings recorded therein.

10. Sri C. Sadasiva Reddy, learned Standing Counsel for the 7th respondent, submits that it is an Organization with limited number of officials and limited facilities and it would be difficult for it to undertake investigation into the mater, which is so complicated. He, however, submits that in case the Court comes to the conclusion that the matter be entrusted to the CBI, it is prepared to undertake the same, provided necessary directions are issued to the Agencies of the State Government, provide sufficient number of officials at its disposal as well as necessary infrastructure.

11. As observed earlier, the petitioner seeks a writ of mandamus, for entrustment of investigation of the matter relating to misappropriation of Government funds to the 7th respondent. Before dealing with the matter on merits, the principles laid down by the Supreme Court in the issue of entrustment of matters relating to the State Government for investigation by CBI, needs to be taken note of.

12. In State of West Bengal and Others Vs. Sampat Lal and Others, , the Supreme Court held that it was not proper for the High Court to order entrustment of the matter for investigation to CBI, without issuing notice to the State Government and without satisfying itself that the investigation had either not been proper or adequate. It was held that when the matter is already under the investigation of the State Agency, the High Court shall be reluctant in taking the same away from the purview of the State Agency for entrustment of the same to the CBI.

13. In State of Bihar and another Vs. Ranchi Zila Samta Party and another, , the Supreme Court upheld the directions issued by the Patna High Court for entrusting the investigation of the matter to the CBI, even where the State Investigating Agency was in seisin of the matter. The Supreme Court made few modifications to the directions issued by the High Court.

14. In Union of India (UOI) and Others Vs. Sushil Kumar Modi and Others, , further directions were issued as to the mode of investigation to be undertaken by the CBI in the very case, which is the subject- matter of State of Bihar v. Ranchi Zilla Samta Party. The Supreme Court dealt with each and every direction issued by the Patna High Court in its orders dated 13-11-1996 and 19-12-1996 and ultimately directed how the matter should be monitored by the High Court.

15. In Vineet Narain and Others Vs. Union of India (UOI) and Another, , the Supreme Court had constituted the Central Vigilance Commission and Enforcement Directorate. It has also prescribed the interrelation of these two Agencies with the CBI and indicated the mode of their functioning.

16. A reading of the judgments of the Supreme Court referred to above as well

as the other judgments on the subject discloses that it is only in exceptional cases that the High Court can direct entrustment of investigation of matters, which are otherwise within the scope of the State Governments, to CBI. The High Court should not only be satisfied as to the existence of necessary factual background, but also the preferability and advisability of the entrustment of the investigation of the matter to the CBI. Leaning towards investigation by CBI in such matters can be on account of various factors. These may include the complexity and vast dimensions of the matters to be investigated, inability or laxity on the part of the investigating agencies of the State Government. Entrustment of the investigation to CBI in such cases cannot by itself signify of lack of confidence in the investigating agencies of the State Government, unless a specific finding is recorded to that effect.

17. The petitioner had alleged that the funds to the tune of Rs. 40-00 crores, which are allocated to be spent in different Schemes were misappropriated by the various Agencies entrusted with the Schemes. His grievance is that though the matter has several dimensions and vast public importance, an effort was made to trivialize the same by branding the acts of misappropriation as diversion of funds.

18. The allegation of the petitioner that there was defalcation of huge amount of money earmarked for various Drought Schemes remains unchallenged. In fact it stands admitted, from the point of view of State Government, as is evident from various orders issued by it from time to time and the averments in the set of counter affidavits filed on its behalf. The preamble of each and every order that is passed by the Government in this regard supports the allegation of the petitioner. For example, in G.O. Rt. No. 4501 issued by the GAD Department, dated 13-8-1996, it was observed as under:

"Whereas, it has come to the notice of the Government of Andhra Pradesh, that Sri R. Sundaravadan, I.F.S. (AP:82), while functioning as Project Director, Drought Prone Area Programme, Anantapur, had committed serious irregularities like diversion of crores of rupees for unauthorized works leading to mis-utilisation and misappropriation of Government money."

In respect of certain other officers, different expressions were used, such as, misutilisation of Government money, diversion of funds, etc. As many as 11 charges were framed as against the Project Director as regards the said irregularities. In the 1st counter-affidavit, one of the allegations against the said Officer is that he was involved in large scale of diversion of funds to the tune of Rs. 30.62 crores. In this writ petition, this Court is not concerned with the truth or otherwise of the allegation as to the misappropriation or diversion of funds. The concern of the Court whether there was any attempt to prosecute those involved in a matter of such a magnitude under the provisions of Prevention of Corruption or IPC.

19. Through its order in G.O. Rt. No. 443 dated 17-4-1997, the Government had

constituted a Committee comprising of 5 Officers of the various departments to enquire into the matter. The Committee, in turn, had undertaken investigation into the" matter and submitted its report dated 25-6-1998. The learned Additional Advocate General has made available a copy of the said report. The Committee recorded its finding that there were large scale defalcation of funds. Obviously, on account of limited nature of its terms of reference, it has used the expressions, such as, "amounts remaining unadjusted, unaccounted for, diverted, etc". The Committee has not only confirmed the serious financial irregularities, but had also indicated the persons responsible for the same. The Committee had considered at length the various irregularities with reference to facts and figures and had furnished reasons in support of its conclusions. It should be said to the credit of the Members of the Committee that they have undertaken a thorough examination of the matter and have recorded clear and unequivocal finding and fixed the responsibility on the concerned Officers.

20. However, it needs to be noticed that the Committee was not functioning under any statutory provision. At the most, the findings of the Committee constituted the basis for disciplinary proceedings against the officials. Though a summarized statement is furnished as to the nature of proceedings initiated against various officials, this Court is not concerned with the nature, stage or outcome of the disciplinary proceedings against such officials. The concern is only as to whether any effort was made by the 1st respondent to prosecute the persons involved in such a large-scale defalcation of funds under the provisions of the Act and IPC, It is rather incidental that there is not even an allegation against any non public servant in the scandal. Had there been such allegations, it would have been difficult to separate the extent of culpability against various categories of people.

21. A perusal of the counter-affidavits filed by Respondents 1 to 6 and the material placed before this Court, discloses that the allegations against several Officers, be they of All India Service or of State Service, related to much more than mere procedural irregularities, or of diversions. Huge amounts remained unaccounted for. The report submitted by the Committee constituted by the Government discloses that several works for which funds were spent did not exist on the ground at all. Once such startling facts have surfaced, two courses of action were open to the 1st respondent, viz., (1) to initiate disciplinary proceedings against the Officers who were responsible for the same; and (2) to take steps to prosecute those involved in the matter. The 1st respondent already initiated the 1st step in the form of issuance of charge-sheets and taking further proceedings. So far as the 2nd step is concerned, no effort was made in this direction.

22. The petitioner proceeded on the assumption that the matter was entrusted to be investigated by the 5th respondent i.e., Anti-Corruption Bureau of the State and the 6th respondent i.e., the Vigilance and Enforcement Department. In the 1st counter-affidavit filed on behalf of respondents 1 to 6, it is stated as under:

"There are three enquiry agencies in the State to investigate into the irregularities viz., Vigilance and Enforcement Department, Anti Corruption Bureau and Andhra Pradesh Vigilance Commission."

It was stated that the matter was entrusted to be investigated by the Enforcement and Vigilance Department. It was not stated that the matter was entrusted to the Anti-Corruption Bureau.

23. On verification from the learned Additional Advocate-General, it became evident that the State did not initiate any proceeding under the said Act or IPC and the matter was not entrusted to the 5th respondent at all. The reason stated therefore is that the 1st respondent wanted to satisfy itself as to the existence of firm factual basis and for that purpose it waited till the conclusion of the disciplinary proceedings.

24. When matters of acceptance of illegal gratification irrespective of the amounts involved, instances of possession of disproportionate assets by public servants are promptly investigated and followed by the 5th respondent and Conductors of State Transport Undertakings are removed from service for irregularities involving trivial amounts, this Court finds that the 1st respondent ought to have taken steps to prosecute the public servants involved in the matter under the provisions of IPC and Prevention of Corruption Act. At this stage, it is not necessary to go into the questions as to why the investigation and prosecution were not undertaken. The writ petition itself was pending in this Court for the last 8 years.

25. In this context, it needs to be observed that time and again, the Supreme Court held that whenever allegations are made against public servants as to corruption or other related activities, initiation of disciplinary proceedings, on one hand, and prosecuting public servants under the provisions of the Act and IPC, are totally independent of each other. The outcome in either of them does not have any impact on the other. The 1st respondent did not have to wait till the conclusion and assumption of finality of the disciplinary proceedings, which are said to have been initiated against various officials; for the purpose of initiating prosecution under the Act and IPC. The definition of ''Criminal Misconduct'' u/s 13C of the Act and scope of offences under Sections 405 - 409 are very wide to take in fold the acts of misappropriation by public servants or conversion of any property entrusted to them or under their control, for their use. Such misconduct or offences, if established, would attract punishments. The Act and IPC have taken care of possible incidences relating to corruption. Having regard to the disclosures made in the counter-affidavits, reports of various agencies and the records available with such agencies, it cannot be said that there was no material to initiate prosecution against the persons involved.

26. Transparency in functioning, particularly in public offices, has been the hallmark of Rule of Law and in fact the legal system itself. Apart from it, lack of transparency would not only inject elements of resentment and frustration in the

governed, but also would shake their confidence in the system. If such a situation arises, the existence of the various agencies that are entrusted with the task of ensuring transparency becomes questionable. Having regard to the fact that no steps were taken so far by any agency, to investigate into the matter or to prosecute those involved in the matter, this Court finds that it is a fit case for ordering investigation of the matter.

27. So far as the agency to which the investigation be entrusted is concerned, it needs to be seen that the 5th respondent did not even act in the matter, for the last several years. The investigation so far undertaken by the State was confined only to the departmental proceedings or other verification of records. The funds related to various departments. Officials of All India Services and various other Services are involved, if the reports submitted so far are any indication. Most of the funds are advanced by the Union Government. The State Agencies have their own limitations in undertaking a deep and thorough investigation into such matters. This Court feels that non-initiation of prosecution in the matter is more on account of administrative complications at the State level than for extraneous reasons.

28. Having regard to these aspects, viz., dimension and complexity of the matter, this Court finds that it is a fit case for entrustment of investigation to the CBI. This step need not be treated as any expression of lack of confidence or pronouncement on the capabilities of the investigating agencies of thq State. The effort is only to get to the root of the matter effectively at the earliest and to ensure transparency. Any outcome of the investigation would be a step towards ensuring transparency and adding credibility to the system as a whole. Having regard to the limited resources at the disposal of the 7th respondent, the 1st respondent needs to extend its cooperation in the form of keeping sufficient number of officers and adequate infrastructure at the disposal of the 7th respondent.

29. Though a strong plea was made on behalf of the petitioner for issuance of a continuing mandamus and for supervision of the progress of the investigation by this Court, it is found that there is no necessity to resort to such a course of action. Confidence has to be reposed in the respective agencies. It is only in exceptional cases that too, where specific allegations constituting the basis of lack of confidence in the agency are made that such a course of action is adopted.

30. Hence, the writ petition is allowed directing that the 7th respondent, viz., the Central Bureau of Investigation, shall undertake investigation into the matter relating to misappropriation, conversion or other related offences as regards funds released and spent during the years 1993 to 1996 on various Schemes, such as, Employment Assurance Scheme, Integrated Water Development Programme, Drought Prone Area Programme, Integrated Rural Development Programme, Desert Destruction Programme, etc., in the Anantapur District of Andhra Pradesh. The 7th respondent shall be free to proceed in its own way in investigating and prosecuting the matter, uninfluenced by any observations or

findings in the disciplinary proceedings initiated against the persons involved. The 1st respondent and its other agencies shall make available the necessary records including the report submitted by the Committee constituted under G.O. Rt. No. 443, PR&RD, dated 17-4-1997 to the 7th respondent. The 1st respondent shall also place adequate number of officials and infrastructure including vehicles at the disposal of the 7th respondent. The investigation by the 7th respondent shall be completed as early as possible and not later than 6 months from the date of receipt of a copy of this order. The 7th respondent shall take further steps, depending on the outcome of the investigation.

