

(2014) 07 SC CK 0046

In the Supreme Court Of India

Case No : Criminal Appeal No. 1615 of 2013

State of Bihar

APPELLANT

Vs

Ashok Kumar Singh

RESPONDENT

Date of Decision : 09-07-2014

Acts Referred:

All India Services (Discipline and Appeal) Rules, 1969 — Rule 6, 7(1), 7(2)
Bihar Reorganisation Act, 2000 — Section 76, 89
Penal Code, 1860 (IPC) — Section 109, 120B, 201, 420, 465
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2014) 3 ACR 2657 : (2014) 3 AJR 776 : (2014) 86 ALLCC 617 :
(2014) 3 JLJR 344 : (2014) 3 MLJ(Cri) 761 : (2014) 3 PLJR 330 : (2014) 3
RCR(Criminal) 883 : (2014) 8 SCALE 490 : (2015) 1 SCC(L&S) 304 : (2014) 9
SCJ 324

Hon'ble Judges : V. Gopala Gowda, J;Sudhansu Jyoti Mukhopadhyaya, J

Bench : Division Bench

Final Decision : Allowed

Judgement

JUDGMENT

Sudhansu Jyoti Mukhopadhyaya, J.—This appeal has been preferred by the State of Bihar and others against the judgment dated 7th May, 2007 passed by the High Court Judicature at Patna in Cr. W.J.C. No. 352 of 2002. By the impugned judgment the High Court giving reference to the provisions of Bihar Reorganisation Act, 2000 held that the impugned FIR instituted on 20th August, 2002 by State of Bihar, much after the appointed day is not maintainable and quashed the FIR.

2. The factual matrix of the case is as follows:

The 1st Respondent-Ashok Kumar Singh belongs to Indian Administrative Service. He was an officer for the cadre of unified Bihar and was posted as the Managing Director of the Bihar State Financial Corporation (hereinafter referred to as "BSFC") (between 12th May, 1994 and 19 June, 1998). On 1st June, 1996

complaints were received against the 1st Respondent and some others alleging that as the Managing Director of the BSFC he and ten other persons including six public servants floated two NGOs and received illegal gratification by forcing the BSFC beneficiaries/loanees to deposit money in the NGOs in return of financial favours shown to them by waving off outstanding loan recoveries. They were also alleged of tampering with records. The Vigilance Department, Government of Bihar instituted an inquiry.

3. The 1st Respondent at that stage filed a writ petition bearing CWJC No. 7680 of 1997 in the Patna High Court challenging the inquiry. The same was disposed of with certain observations. The observation made by the High Court having not complied with, a contempt petition bearing M.J.C. No. 1498/1998 was filed by the 1st Respondent in the Patna High Court. It was disposed of with a peremptory order to dispose of the inquiry within 8 months, subject to grant of extension.

4. Meanwhile, the unified State of Bihar was bifurcated into the State of Bihar and the State of Jharkhand through the Bihar Reorganisation Act, 2000 (hereinafter referred to as the "Reorganisation Act"). 15th November, 2000 was fixed to be the appointed day for such bifurcation. The 1st Respondent was allotted/transferred to Jharkhand Cadre. In absence of any progress in the Vigilance inquiry, the 1st Respondent filed writ petition bearing CWJC No. 1573/2001 before the High Court of Jharkhand at Ranchi. He sought an order to restrain the State of Bihar from proceeding with the inquiry against him and from taking any coercive action against him. He also sought to quash the notice dated 7th April, 2001 issued by the Deputy Superintendent of Police, Vigilance (Investigation) asking him to appear on 24th April, 2001 in the inquiry.

5. The High Court of Jharkhand by order dated 20th April, 2001 refused to interfere with the inquiry and dismissed the writ petition. The Letters Patent Appeal filed by the 1st Respondent against the order dated 20th April, 2001 was also dismissed by the Division Bench of the High Court of Jharkhand by order dated 27th September, 2001.

6. Meanwhile, on the basis of a detailed inquiry, the Vigilance Investigation Bureau instituted Vigilance P.S. Case No. 7/2002 dated 20th August, 2002 u/s 420/465/466/467/471/477(A)/201/109/120B Indian Penal Code and u/s 13(1) (d) read with Section 13(2) of Prevention of Corruption Act, 1988 against the 1st Respondent and ten other accused persons including six public servants. The FIR was lodged by the Vigilance Investigation Bureau, Government of Bihar at Patna.

7. The 1st Respondent challenged the aforesaid FIR dated 20th August, 2002 by filing a writ petition bearing Cr.W.J.C. No. 352 of 2002 before the Patna High Court with a prayer to quash the FIR. Further prayer was made to direct the Vigilance Department, Government of Bihar not to investigate or to proceed against him. The Vigilance Department filed its counter affidavit thereto.

8. Later, another Vigilance P.S. Case No. 05/2003 dated 31st March, 2003 u/s

420/467/468/471/109/120(B) Indian Penal Code and u/s 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 was also registered against the 1st Respondent and four other officers of the BFSC for giving financial favours to M/s. Luxman Wire Industries, Digha Ghat, Patna.

9. The writ petition was heard by a learned Single Judge of the Patna High Court and by the impugned judgment and order dated 7th May, 2007 the learned Single Judge quashed the FIR bearing Vigilance P.S. Case No. 7/2002 dated 20th August, 2002 lodged against the 1st Respondent and restrained the Petitioner-State of Bihar from proceeding with the case.

10. Before the High Court on behalf of the 1st Respondent, it was contended that in view of the fact that he has been allotted to the IAS Cadre of the Jharkhand State on 15th November, 2000, i.e. the date on which the Jharkhand State came into existence, the Vigilance Department of the State of Bihar ceased to have jurisdiction to investigate the case against him. Under law the investigation of any vigilance case against him will stand vested in the State of Jharkhand after its creation on 15th November, 2000. In that view of the matter, it was contended on behalf of the 1st Respondent that the lodging of the FIR against him by Vigilance Investigation Bureau of the State of Bihar is completely without jurisdiction and, therefore, it is liable to be quashed.

11. On behalf of the Appellant-State of Bihar it was submitted that since the alleged commission of offences by the 1st Respondent had taken place within the State of Bihar while the 1st Respondent was still serving State of Bihar it will have jurisdiction to proceed against him and to lodge FIR. It had been submitted that the subsequent allotment of cadre of the 1st Respondent to the State of Jharkhand will not make any difference in as much as the offences as alleged have been committed by him while he was serving in the State of Bihar. On this ground it had been argued that there was no merit in the submission of the 1st Respondent.

12. Learned Judge referred to the provisions of the Bihar Reorganisation Act which came into force with effect from 15th November, 2000. Referring to provisions of the Reorganisation Act and circulars issued by the Central Government the learned Single Judge held that in the present case it is Section 76 of the Reorganisation Act and not Section 89 of the Reorganisation Act which is applicable and in that case the Vigilance Department of the State of Bihar has no jurisdiction to inquire into the matter or to lodge FIR.

13. Before this Court the parties have taken similar pleas as was taken before the High Court.

14. On perusal of records and on careful consideration of the rival submissions made on behalf of the parties, we are of the view that P.S. Case No. 7 of 2002 dated 20th August, 2002 against the 1st Respondent was maintainable and learned Judge of the High Court was wrong in holding that the said FIR lodged at Patna, Bihar was not maintainable.

15. So far as the provisions of Section 76 and Section 89 of the Reorganisation Act and the circulars issued by the Central Government, which were relied upon by the learned Judge of the High Court is concerned, we are of the opinion that they are not applicable in the facts and circumstances of the present case. For coming to such finding it is desirable to discuss the relevant provisions of the Reorganisation Act and Circulars issued by Central Government from time to time.

16. Section 76 of the Reorganisation Act deals with power of Central Government to give directions to the State Government which reads as follows:

Section 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.

17. In exercise of power conferred u/s 76 the Central Government issued a direction dated 28th March, 2002 in which it was provided that if any vigilance inquiry 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 the aforesaid circular dated 28th March, 2002 a reference has been made to Memorandum No. 13013/8/2000-AIS(I) which is an office memorandum issued by the Government of India under the subject: Personnel related issues incident to bifurcation of States. Paragraph 2 of the said memorandum reads 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 of which the individual officer stands allotted. Hence, the service records and CR dossiers of officers allotted to Jharkhand, Chhattisgarh and Uttaranchal should be transferred to these States.

[b] The custody and conduct of pending disciplinary proceedings/inquiries in respect of IAS 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.

18. By another letter No. 1 Misc. 8038/2001 Karmik 241/01 clarification has been made regarding the pending proceedings against the AIS Officers pursuant to bifurcation of the States. In the said letter 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 inquiry which may have been initiated by the Government of Bihar in respect of an officer who now stands allocated to Jharkhand cadre.

19. On behalf of the State of Bihar it was submitted before the High Court that the dates of the alleged occurrence were prior to the creation of the State of Jharkhand and, therefore, Section 76 of the Reorganisation Act will make no difference. Moreover, it was contended that the alleged places of occurrence of the various offences said to have been committed by the 1st Respondent 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 1st Respondent. In this connection counsel on behalf of the State of Bihar drew attention of the Court to Section 89 of the Reorganisation Act which reads as follows:

Section 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.

xxx

20. Learned Judge having noticed the aforesaid provisions and circulars issued by the Central Government observed as follows:

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 inquiry with respect to the Vigilance P.S. 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 F.I.R. in this regard was lodged on 20.08.2002 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 20.08.2007? 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 20.08.2002 when he was already allotted to the State of Jharkhand with effect from 15.11.2000 and was born on the I.A.S. cadre of the 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 P.S. 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.

21. Admittedly, the first Respondent had not challenged the vigilance inquiry in the writ petition in question before the High Court of Judicature at Patna. What was challenged was the FIR lodged against the 1st Respondent as Vigilance P.S. Case No. 7 of 2002 dated 20th August, 2002 u/s 420/465/466/467/471/477(A)/201/109/120B Indian Penal Code and u/s 13(1) (d) read with Section 13(2) of Prevention of Corruption Act, 1988 qua the 1st Respondent.

22. The 1st Respondent challenged the vigilance inquiry in the earlier writ petition bearing Cr. W.J.C. No. 7680/1997 in the Patna High Court. That was disposed of on 25th November, 1997. There was no occasion for the 1st Respondent to challenge the said vigilance inquiry by filing another writ petition.

23. Part VIII of the Reorganisation Act relates to "provisions as to the services". u/s 76 the Central Government has been empowered to give such directions to the State Government of Bihar and State Government of Jharkhand as may appear to it to be necessary for the purpose of giving effect to the provisions of Part VIII and the State Governments are made bound to comply with such directions. By the clarifications issued from time to time, as referred to above, State Government on whose cadre the accused officers were posted after bifurcation was directed to institute disciplinary proceedings against such officers. By letter dated 10th July, 2001 it was clarified by the Central Government that the State of Jharkhand would be the competent authority to complete pending vigilance inquiries against officers who stand allocated to the Jharkhand cadre as has already been clarified in this Department's Office Memorandum dated 20th December, 2000.

24. From the aforesaid circulars issued from time to time it is clear that the circulars aforesaid related to the Departmental Inquiry and Vigilance Inquiry and none of the circulars relate to lodging of FIR against an officer of either State at one or other place. Section 89 of the Reorganisation Act relates to pending proceedings. Lodging of FIR after reorganization of the States (15th November, 2000) herein has nothing to do with pending proceedings, therefore, in the matter of challenge to an FIR (quashing of FIR), neither provisions of Section 76 or Section 89 of the Reorganisation Act nor circulars issued by the Central Government, as noticed by the High Court and discussed above are applicable. For the said reason we hold that the High Court was wrong in referring to the provisions of the Reorganisation Act and circulars issued by the Central Government for holding the FIR to be not maintainable in the State of Bihar.

25. The allegations are related to the period 12th May, 1994 to 1st June, 1996 when the 1st Respondent was posted at Patna, Bihar as Managing Director of the BSFC, therefore, on behalf of the Appellant it was rightly submitted that since the alleged commission of offences by the 1st Respondent has taken place in State of Bihar while he was serving the State, it will have jurisdiction to proceed against the 1st Respondent and to lodge FIR at Patna.

26. Learned Counsel for the 1st Respondent also raised the question of legality of the FIR, in view of the order passed by the Patna High Court and Jharkhand High Court from time to time.

27. u/s 76, the Central Government is empowered to give such directions to the State Government of Bihar and State Government Jharkhand, for the purpose of giving effect to the provisions of the Bihar Reorganisation Act, the State Government is bound to comply with such directions. By letter No. 1 Misc. 8038/2001 Karmik 241/01 issued by the Central Government clarification has been made regarding the pending proceedings against the AIS officers pursuant to bifurcation of States. In the said letter a reference has been made to letter No. 11018/2/2001-AIS[III] dated 10th July, 2001 in which it was clarified by the Central Government that the Government of Jharkhand would be the competent authority to complete pending vigilance inquiries against the officers who stand allocated to the Jharkhand cadre as has already clarified by the Central Government OM No. 13013/8/2000-AIS[I] dated 20th December, 2000. 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 for any vigilance inquiry which may have been initiated by the Government of Bihar in respect of an officer who now stands allocated to Jharkhand cadre.

28. In view of the aforesaid circular dated 20th December, 2000 and by letter dated 10th July, 2001 read with Section 76 of the Reorganisation Act, vigilance inquiry which was initiated against the 1st Respondent by the Vigilance Department of the State of Bihar prior to reorganisation of the State i.e. 15th November, 2000, should have been transferred to the Vigilance Department of the State of Jharkhand, as the 1st Respondent was allocated cadre of Jharkhand and was posted under the Government of Jharkhand. Therefore, it is rightly contended on behalf of the 1st Respondent that in view of the fact that he has been allocated to the IAS cadre of the Jharkhand State since 15th November, 2000, i.e., the date on which Jharkhand State came into existence, the Vigilance Department, Government of Bihar ceases to have a jurisdiction to investigate against the 1st Respondent.

29. The 1st Respondent had challenged the inquiry before the Patna High Court by filing a writ petition bearing C.W.J.C. No. 7680 of 1997. The said case was disposed of with certain observations. Having not complied with, a contempt petition bearing M.J.C. No. 1498 of 1998 was filed by the 1st Respondent in the Patna High Court. It was also disposed of on 29th November, 1999 with a

peremptory order to dispose of the inquiry within 8 months, subject to grant of extension. Order dated 29th November, 1999 is quoted hereunder:

In pursuance of Court's order, Mr. Arvind Prasad, Secretary, Personnel and Administrative Reforms Department and Mr. N.K. Agrawal, Vigilance Commissioner are present in the Court with relevant file.

It appears that the Vigilance Department submitted report in favour of Petitioner wherein the Chief Secretary ordered to obtain opinion from the Vigilance Commissioner; Petitioner and thereafter from Law Department. After receiving the opinion of the Vigilance Commissioner; reply of Petitioner, the matter was forwarded to the Law Department, which recommended to remand the matter to the Vigilance Department for further inquiry on certain facts. In view of such remand, the Vigilance Department is holding further inquiry in respect of allegations as were made against the Petitioner.

The Vigilance Commissioner states that the further inquiry will be concluded within six months and report will be submitted to the Government within the aforesaid period.

On behalf of the State, the Secretary, Personnel and Administrative Reforms Department states that final decision would be taken by the State by Vigilance Department within two months thereof.

In the facts and circumstances, instead of processing against the opposite parties, I allow them further time to conclude the vigilance inquiry and to pass final order thereof within eight months from today, on failure the said proceeding will stand quashed on the ground of non-compliance of the Court's order.

However, it will be open to the appropriate authority to ask for more time, on genuine ground. The appearance of Mr. Arvind Prasad, Secretary, Personnel and Administrative Reforms Department and Mr. N.K. Agrawal, Vigilance Commissioner are dispensed with.

The M.J.C. application stands disposed of.

30. Admittedly, vigilance inquiry against the 1st Respondent was not completed within 8 months as directed by the High Court. Having not completed the inquiry within the stipulated time, as per order of the High Court, the said proceedings stood quashed on the ground of non-compliance of Court's order.

31. The impugned FIR was lodged against the 1st Respondent based on the Vigilance Inquiry which stood quashed. Therefore, in view of finding recorded above, we hold that FIR itself based on Vigilance Inquiry made by State of Bihar was not maintainable. For the reasons aforesaid, we are not inclined to interfere with the impugned order passed by the Patna High Court.

32. The appeal is accordingly dismissed.