
(2011) 05 JH CK 0003
In the Jharkhand High Court
Case No : L.P.A. No. 149 of 2011

Vishnu Dayal Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (2011) 3 JCR 182

Hon'ble Judges : Prakash Tatia, J; H.C. Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the Appellant, who is the writ Petitioner in W.P. (S) No. 5459 of 2010, wherein one of the applicants, Ram Subhag Singh has been impleaded as a party-intervenor by the impugned order dated 15th April, 2011.

2. As per the brief facts of the case, when the Appellant-Petitioner was posted as Director General of Police, Jharkhand, Ranchi, he and one Rajiv Kumar, the then Additional Director General of Police were alleged to have utilized a sum of Rs. 5.6 crores and 2.5 crores respectively of the Secret Service Fund. After three years, some newspapers reported in the year 2009 that there had been misuse of Secret Service Fund. On such reports, two cases of the nature of Public Interest Litigation, bearing No. W.P. (PIL) No. 3439 of 2009, (Rajiv Kumar v. Union of India and Ors.) and W.P. (PIL) No. 3975 of 2009 (Ram Subhag Singh v. State of Jharkhand and Ors.) were filed in this Court on 23rd July, 2009 and 24th July, 2009 respectively with the prayers to direct the C.B.I. or any other independent agency to conduct an enquiry/investigation into the matter of withdrawal of huge amount from the Secret Service Fund. In these petitions, the State has stated that the State has no objection, if the matter is handed over to the C.B.I. for enquiry by this Court. On this submission of the State, those Public Interest Litigations were disposed of on 28th August, 2010, observing that since the Petitioner has no objection, if appropriate action is taken at the hands of the

State Government. Therefore, in response to the certain D.O. letters relating to the withdrawal of the amount from the Secret Service Fund, the then Home Secretary, Government of India wrote a letter on 16th September, 2010 to the then Chief Secretary, Government of Jharkhand, intimating therein that the consent of the State Government in terms of Section 6 of the Delhi Special Police Establishment Act, 1946 is required for conducting an enquiry/investigation by the C.B.I.

3. Subsequent to that, one writ petition, bearing W.P. (C) No. 292 of 2010 was filed before the Hon''ble Supreme Court, wherein, prayer was made for in-depth enquiry by the C.B.I. into the utilization of the Secret Service Fund by the Police authority of each State including the State of Jharkhand. However, the said writ petition was dismissed by the Hon''ble Supreme Court by order dated 20th September, 2010, a copy of which has been annexed in this Appeal also, holding that there is no statutory provision to institute the C.B.I. enquiry in the matter of withdrawal of the Secret Service Fund. However, a notification in terms of Section 6 of the Delhi Special Police Establishment Act, 1946 was issued on 23rd October, 2010 i.e. after the disposal of the SLP By the Hon''ble Supreme Court by order dated 20th September, 2010 enabling the Delhi Special Police Establishment to exercise power and jurisdiction in the State of Jharkhand in the matter relating to withdrawal of the amount from the Secret Service Fund. The said order dated 20th September, 2010 has been challenged before this Court by filing a writ petition. On 29th October, 2010, this Court after considering the order passed by the Hon''ble Supreme Court in W.P. (C) No. 292 of 2010, passed an order, staying the operation of the Notification whereupon, two intervention applications, bearing I.A. Nos. 3983 and 4208 of 2010 were filed on behalf of Rajiv Kumar and another Ram Subhag Singh respectively for impleading them as party-Respondents on the plea that the writ petitions did crop up from the order passed by this Court in the Public Interest Litigation, which had been filed by them and as such, they do have right to intervene in the writ petition. However, both the interlocutory applications were dismissed on the ground that the right of the intervenor is not going to be affected adversely even if the prayer made in the writ petition is allowed. The said order was challenged in L.P.A. No. 08 of 2011, which was disposed of vide order dated 10th January 2011. However, in the light of the order dated 10th January 2011, the applicants moved an I.A. No. 262 of 2011 for being impleaded as party-Respondent and that application was submitted by said Ram Subhag Singh. The learned Single Judge, allowed the application vide order dated 15th April, 2011. Hence, this Appeal has been preferred by the original writ Petitioner.

4. Learned Counsel for the Appellant vehemently submitted that in view of the earlier order passed by the learned Single Judge, rejecting the application for being impleaded as intervenor by the same party, has not been set aside by any Court. The learned Single Judge should not have impleaded the applicant as intervenor/Respondent in the writ petition. It is also submitted that otherwise also, on merits, the learned Single Judge has not at all applied his mind to find

out, whether in fact, the applicant is a necessary party or even a proper party. It is also submitted that the writ Petitioner is a dominus litis and no one can be added as a party against the wishes of the Petitioner and this is a rule of law. However, there is an exception provided under Order I Rule 10 CPC. It is also submitted that the power of the Court under Order I Rule 10 CPC is also subject to judicial discretion and not arbitrary and only party, who is found to be a necessary or proper party can be added as Respondent in the light of the decision given by the Hon'ble Supreme Court in the case of Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, and in the recent judgment in the case of Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. and Others, , wherein it has been clearly held that a "proper party" is a party who, though not a necessary party, is the person whose presence would enable the Court to completely, effectively and adequately adjudicate upon all the matters in dispute in the suit, though he need not be a person in favour of or against whom the order is to be made. The learned Counsel for the Appellant vehemently submitted that the order dated 10th January, 2011, which has been relied upon by the learned Single Judge, nowhere declared that the applicant is a proper party and the Court's observation "we consider that the Appellant is a proper party" is only an observation and not the finding with respect to the issue whether the applicant is a necessary or proper party. It is also submitted that the learned Single Judge has also not considered this aspect of the matter, whether the applicant is a proper party or not and proceeded to decide the intervention applications being influenced by the order passed by the Division Bench dated 10th January 2011, which was passed without affording an opportunity of hearing to the present Appellant.

5. We have considered the submissions of the learned Counsel for the Appellant and perused the facts of the present case. It is not in dispute that the intervenor, Ram Subhag Singh was one of the writ Petitioners, who preferred the Public Interest Litigation seeking direction for CBI inquiry in the matter of Secret Service Fund. It is also not in dispute that the Hon'ble Supreme Court in the matter of this very Secret Service Fund dismissed the Public Interest Litigation vide order dated 20th September, 2010 on the ground that in absence of any statutory provision, the writ cannot be issued and therefore, the said writ petition No. 292 of 2010 was dismissed. However, subsequent to that, a Notification in terms of Section 6 of the Delhi Special Police Establishment Act, 1946 was issued on 23rd October, 2010. The said Notification is an empowering and enabling the provision which empowers the Delhi Special Police Establishment to exercise powers and jurisdiction in the State of Jharkhand in the matter relating to the withdrawal of the amount from the Secret Service Fund and that Notification was challenged by the Appellant by filing writ petition bearing No. W.P. (S) No. 5459 of 2010. In L.P.A. No. 08 of 2011, the Division Bench took note of the fact and disposed of that L.P.A. preferred by the applicant by the following order:

Heard learned Counsel for the parties.

In view of the order, passed in W.P. (PIL) No. 3975 of 2009, we consider that the Appellant is a proper party there in the W.P. (S) No. 5459 of 2010 and therefore, the learned Single Judge may consider the request of the Appellant for joining him as a party Respondent to W.P. (S) No. 5459 of 2010 afresh.

This Letters Patent Appeal is accordingly, disposed of.

6. In view of the above, it is clear that the applicant who was prosecuting the matter before a Division Bench of this Court in the form of L.P.A. No. 08 of 2011, this L.P.A. his petition was dismissed only after observing that the Division Bench was of the considered view that the Appellant is a proper party and in W.P. (S) No. 5459 of 2010, we cannot read the words "we consider that the Appellant is a proper party" to be a mere opinion expressed by the Division Bench without application of the mind and particularly when it was not adversary litigation in L.P.A. No. 08 of 2011. If the Division Bench is of the view that the matter is required to be considered by the learned Single Judge only then the L.P.A. itself could not have been disposed of with the permission to the applicant to move application that too after observing that "we consider that the Appellant is a proper party", as in that situation, the applicant-Petitioner's petition will stand dismissed without adjudication and before Single Bench he will not be party.

7. It is true that the order by which the learned Single Judge earlier rejected the application of the intervenor, has not been set aside but at the same time, it is also true that the order passed by the Division Bench, dated 10th January, 2011, has not been challenged by anybody and the writ Petitioner/Appellant, who if, was feeling aggrieved against the order dated 10th January, 2011, then he could have also moved an application for recalling the order dated 10th January, 2011 or could have challenged that order dated 10th January, 2011 in lawful manner.

8. We have considered all these aspects of the matter. In view of the fact that according to the learned Counsel appearing for the Appellant, the Petitioner is a dominus litis is a question, subject to exception as required under Order I Rule 10 CPC and the Appellant is not a proper party. The true meaning of the word "proper party" has been given by the Hon"ble Supreme Court in the judgments referred to hereinabove. The Hon"ble Supreme Court in the case of Mumbai International Airport (supra) has laid down that a "proper party" is a party who though not a necessary party is a person whose presence would enable the Court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit though, he need not be a person in favour of or against whom the decree is to be made. So far as this legal proposition is concerned, we find that the judgment delivered in the matter of Mumbai International Airport (Supra) was delivered in a matter arising out of a suit proceeding and that too in the suit for specific performance of contract, which is a suit of specific nature, wherein, the granting of the decree by the trial court is a discretionary relief and thus, the scope of the suit in the specific relief matter is very limited.

9. Be that as it may, so far as the proposition of law is concerned, that

proposition of law, if we apply it to the present case, it will be apparent that the present writ petition was filed by the intervenor who tried to emphasise that there is a reasonable ground for initiation of the investigation/enquiry through some centralized agency and it cannot be said that he was altogether unconnected with the controversy. The intervenor sought relief, which in fact, stood granted by the issuance of the Notification u/s 6 of the Delhi Special Police Establishment Act, 1946, enabling the Delhi Special Establishment Act, to exercise powers and jurisdiction in the State of Jharkhand in the matter relating to withdrawal of the amount from the Secret Service Fund. The writ Petitioner/Appellant challenged the operation of the Notification. Therefore, also we cannot draw inference that the intervenor had no knowledge about the facts of the case or he can enlarge the scope of the petition, filed by the writ Petitioner/Appellant. So far as the contention of the learned Counsel for the Appellant that the learned Single Judge has not decided the issue, whether the intervenor is a necessary party or not, we may observe that the learned Single Judge has considered this aspect of the matter and clearly observed that whatever may be the nature of the order but this much is certain that the said order is an outcome of the litigation brought by the Intervener wherein certain materials have been disclosed. Therefore, there does not appear to be any difficulty in holding the intervenor to be a proper party as the proper parties are those whose presence in a matter of connivance is required for enabling the Court to adjudicate more effectively and completely and in that view of the matter, the Intervener can be held to be a proper party.

10. Learned Counsel for the Appellant, on query made by this Court, drew our attention to the application submitted by the Intervener and pointed out that in the application itself, there is no material, pleading or averment, which can be ground for impleading the applicant as party in the writ petition. We have perused the said application and find that applicant narrated the facts with respect to the earlier orders including the order dated 01st December, 2010 and 10th January, 2011 also. We are of the considered opinion that if the Court drew inference from the facts stated instead of asking for mechanical compliance of the statutory provision and if a reasonable inference can be drawn from the averments made in the application or petition, it cannot be rejected on technical ground by saying that it contains no specific and particular words as available in the Statute. Therefore, we are of the considered opinion that this application could not have been rejected by the learned Single Judge merely on the ground that on this technical ground.

11. From the above passage of the order, it is clear that the learned Single Judge has found that the Intervener was a proper party apart from the fact that the Division Bench also found the applicant as proper party. In that view of the matter, we find that the learned Single Judge has not committed any error, so as to call for any interference by this Court while exercising the jurisdiction under the Letter Patent Appeal.

12. This Letters Patent Appeal is accordingly, dismissed, having no merit.