

(2011) 07 AHC CK 0278
In the Allahabad High Court
Case No : Writ Petition No. 3659 (M/B) of 2011

We, The People

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-07-2011

Acts Referred:

Constitution of India, 1950 — Article 32
Criminal Procedure Code, 1973 (CrPC) — Section 173(8)
Penal Code, 1860 (IPC) — Section 120B, 302, 409, 419, 420

Citation : (2011) 7 ADJ 163

Hon'ble Judges : Ritu Raj Awasthi, J; Pradeep Kant, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Pradeep Kant, J.—Heard learned Counsel for the parties.

2. By means of this writ petition, filed in the nature of Public Interest Litigation, the Petitioner has prayed for issuance of a writ, order direction in the nature of mandamus directing the Union of India to entrust the investigation of crime case No. 322 of 2010 u/s 302/120-B IPC of P.S. Vikas Nagar, Lucknow and case crime No. 269 of 2011 u/s 302/120-B IPC of P.S. Gomti Nagar, Lucknow, relating to murders of two Chief Medical Officers, Dr. Vinod Arya and Dr. B.P. Singh respectively, to the Central Bureau of Investigation (CBI).

3. The writ petition was filed praying for the aforesaid relief alongwith two other reliefs, claiming investigation by the CBI about the misappropriation of funds and bungling done in the implementation of National Rural Health Mission (hereinafter referred to as NRHM) programme within the State of U.P., but the said prayers were not pressed by the Petitioner, they having already been made in various other writ petitions, which are engaging the attention of this Court.

4. The Central Government launched the NRHM programme, under which various schemes were to be undertaken by the State Governments, relating to health,

medical care, etc. The said programme has been funded by the Central Government, and the State Government is to implement and execute all the schemes under the said programme in the manner prescribed for achieving the desired results. Programmes/schemes like Jachcha Bachcha Suraksha, Pregnant Women and Child Tracking, National Leprosy Eradication, Revised National Tuberculosis Control, Polio Eradication and World Population Day and Health Mela are few such schemes, which are to be implemented by the State Government.

5. Leaving other details, which need not be incorporated in the present order, the admitted facts are that because of the bungling and misappropriation of funds in the implementation of various schemes under NRHM, there was a lot of media reporting and unfortunately on 27.10.2010, Dr. Vinod Kumar Arya, Chief Medical Officer (Family Welfare) was murdered outside his house when he was on morning walk and another murder of Chief Medical Officer (Family Welfare) Dr. B.P. Singh took place on 2.4.2011, in respect of which two F.I. Rs were registered, one at case crime No. 322 of 2010 under Sections 302 and 120-B IPC at P.S. Vikas Nagar, Lucknow and the other at case crime No. 269 of 2011 under Sections 302 and 120-B IPC at P.S. Gomti Nagar, Lucknow.

6. The media reports, some of which have been brought on record, though are not conclusive, but do reflect that the aforesaid two murders were taken with great seriousness by the public and the media, for which protests were also lodged. In the mean time, one Dr. Y.S. Sachan, Deputy Chief Medical Officer, who was charged of bungling and misappropriation of funds under NRHM programme and was propagated by the police as main accused in the said scam, was found dead while in judicial custody inside the jail premises. The death of Dr. Sachan was shrouded with mystery. The jail authorities reported it to be a suicide whereas the wife of the deceased, Dr. Malti Sachan, who herself was a doctor, claimed it to be a murder in judicial custody. The police did not register any F.I.R about the said incident and felt satisfied with the report of jail authorities regarding the said death, taking it a case of suicide. Dr. Malti Sachan made a complaint on 23.6.2011 about the said death which had taken place on 22.6.2011, but the F.I.R was registered only on 26.6.2011 at P.S. Gosainganj at case crime No. 271/11 under Sections 302 and 120-B IPC against unknown persons, that too when media took up the cause.

7. The police, at the latter stage, claimed that Dr. Y.S. Sachan was the main accused in plotting and designing the murders of the two Chief Medical Officers aforesaid and thus gave a twist to its own theory that Dr. Sachan was the main accused in the scam. A writ petition bearing No. 6601 of 2011 (PIL) was filed asking for the CBI probe into the death of Dr. Sachan. This Court, vide its order dated July 14, 2011, has entrusted the said investigation to CBI. After the orders were reserved and before the order could be pronounced by the High Court in the said case, the State Government itself issued a notification and a consent order for transferring the investigation in the said case to the CBI. The High Court took notice of the said fact at the time of pronouncement of the judgment

but delivered its own order.

8. We have taken judicial notice of the aforesaid facts, as urged by the learned Counsel for the Petitioner, who has also placed before us the judgment/order passed in the aforesaid writ petition, directing CBI probe in the matter of custodial death of Dr. Sachan. As per the own case of the State Government, the murders aforesaid were linked with the NRHM scam, in which Dr. Sachan was made the main accused and there was obvious link in the two murders of Dr. Vinod Kumar Arya and Dr. B.P. Singh, the State Government, therefore, being conscious of the aforesaid position and taking the view that it would be appropriate that the investigation in these matters be also entrusted to CBI, has issued an order of consent for transferring further investigation to CBI vide its order dated 13.7.2011. Besides referring the aforesaid two cases to CBI for further investigation, the State Government has also referred the two other cases registered as case crime No. 112/2011 under Sections 409, 419, 420, 467, 468 and 471 IPC and case crime No. 115/2011, under Sections 409, 419, 420, 407, 468 and 471 IPC at P.S. Wazirganj, Lucknow, which relate to NRHM scam/irregularities committed in the district of Lucknow to CBI.

9. Sri J.N. Mathur, learned Additional Advocate General, under the circumstances, submitted that the State Government having already consented for further investigation to be carried out by the CBI in the two murders of Chief Medical Officers (Dr. Vinod Kumar Arya and Dr. B.P. Singh), no further orders need be passed in the present writ petition.

10. Learned Counsel for the Petitioner Sri Prince Lenin, however, in response, submitted that the order of the State Government for transferring the aforesaid cases to the CBI with the request that further investigation be made by them, is in fact a device and camouflage for stalling the proper investigation by the CBI as the CBI needs to reinvestigate all the cases by its own agency. His further submission is that the role of the local police and State functionaries is also absolutely doubtful and suspicious as they have been trying to shield the real offenders, who are very high and influential people.

11. Elaborating the aforesaid argument, it was submitted that the charge-sheets have already been submitted in the two murder cases i.e. in the case of murder of Dr. B.P. Singh, on 13.7.2011 naming four persons as accused and in the case of murder of Dr. V.K. Arya, on 16.7.2011 naming six persons as accused in the court and in both cases, 25.7.2011 was fixed by the Chief Judicial Magistrate, Lucknow for proceeding further in the matter, therefore, the CBI be directed to hold investigation afresh and the charge-sheets so submitted by the police be not made the basis for proceeding further in the matter.

12. Sri J.N. Mathur, learned Additional Advocate General, relying upon Section 173(8) of the Code of Criminal Procedure, submitted that further investigation can be done by the police even after submission of the charge-sheets and the State Government being of the view that this should be done by the CBI to allay

all apprehensions in the mind of the public and to instill faith in them about the bona fides of the State Government in dealing with the aforesaid cases, due consent has been given for making further investigation. Sri Mathur also stated that liberty to make further investigation does not prohibit the CBI in making reinvestigation in case there is any linkage found in the two murders of Chief Medical Officers with the murder of Dr. Y.S. Sachan, Deputy Chief Medical Officer, or even otherwise if the CBI feels, that reinvestigation is required.

13. Sri Bireswar Nath for the CBI also clarified that the CBI can make all investigations which are necessary for solving the aforesaid criminal cases, and there is no embargo on the CBI in making necessary investigations merely because some investigations have already been made by the local police or the charge-sheets have been submitted.

14. We take notice of the orders passed by the State Government giving its consent for referring all the aforesaid matters, namely, two murders of Chief Medical Officers, Dr. Vinod Kumar Arya and Dr. B.P. Singh, registered as crime case No. 322 of 2010 u/s 302/120-B IPC of P.S. Vikas Nagar, Lucknow and case crime No. 269 of 2011 u/s 302/120-B IPC of P.S. Gomti Nagar, Lucknow respectively and two cases registered at case crime No. 112/2011 under Sections 409, 419, 420, 467, 468 and 471 IPC and case crime No. 115/2011, under Sections 409, 419, 420, 407, 468 and 471 IPC at P.S. Wazirganj, Lucknow, relating to NRHM scam in the district of Lucknow. We are of the view that the investigation so made by the police and the charge-sheets submitted by it cannot prohibit the CBI in making the necessary investigation right from the beginning in all the aforesaid cases.

15. We have not discussed the events and other facts in detail for the reason that it is the own case of the State that two murders of Chief Medical Officers aforesaid had taken place because of the bungling in NRHM programme and there have been serious irregularities in implementing the same in Lucknow itself, for which F.I. Rs, as already stated, were lodged. It also cannot be ruled out at this stage that the death of Dr. Y.S. Sachan, Deputy Chief Medical Officer in judicial custody was not the result of the same series of murders having been planned and carried out to put curtain on the financial irregularities committed in implementing the NRHM programme. Once this Court has already entrusted the investigation in the case of Dr. Y.S. Sachan to CBI, which order, we are told, has been approved by the Apex Court in a writ petition filed by Dr. Malti Sachan under Article 32 of the Constitution, and since the State Government itself has referred the matters relating to NRHM irregularities committed at Lucknow, to CBI and further that since the investigation can be transferred to CBI even after the submission of charge-sheets, keeping in mind the dictum of the Supreme Court and the steps taken by the State Government, we do feel that the matters require to be investigated by the CBI thoroughly.

16. Accordingly, we direct that all matters aforesaid be investigated by the CBI. The CBI shall register the necessary cases and forthwith depute an officer to

receive from the Respondents all records relating to case crime No. 322 of 2010 under Sections 302 and 120-B IPC, P.S. Vikas Nagar, Lucknow and case crime No. 269 of 2011 under Sections 302 and 120-B IPC, P.S. Gomti Nagar, Lucknow, relating to murders of two Chief Medical Officers, Dr. Vinod Arya and Dr. B.P. Singh respectively, and that of case crime No. 112/2011 under Sections 409, 419, 420, 467, 468 and 471 IPC and case crime No. 115/2011, under Sections 409, 419, 420, 407, 468 and 471 IPC, registered at P.S. Wazirganj, Lucknow, relating to NRHM scam in the district of Lucknow. The Respondents shall immediately hand over all such records to such officer. The State shall provide all assistance and logistic support to CBI. The investigation shall be completed expeditiously, say, within a maximum period of three months. The Director, CBI is directed to take charge of the investigation immediately.

17. Consequent to our aforesaid order, no action shall be taken by the magistrate concerned in pursuance of the charge-sheets submitted in the aforesaid cases.

18. We clarify that any observation made in this order, which may apparently touch the facts under investigation, would not be taken as opinion of this Court on the issues in question.

19. The Registry shall immediately forward a copy of this order to the Director, CBI for compliance.

20. The writ petition stands allowed. No costs.