

State of Bihar and another

Vs

Ranchi Zila Samta Party and another

Civil Appeals Nos. 5177 and 5178-83 of 1996

(K. Ramaswamy, S. P. Bharucha, K. S. Paripoornan JJ)

19.03.1996

JUDGMENT

1. Leave granted.

2. Heard learned counsel on both sides.

3. These appeals by special leave arise from the judgment dated March 11, 1996 of the Division Bench of the Patna High Court in CWJC No. 459 of 1996 and batch. It is not necessary to narrate all the facts stated in the impugned judgment of the High Court. Suffice it to state that a large-scale defalcation of public funds, fraudulent transactions and falsification of accounts, to the tune of around Rs. 500 crores, came to light in the Animal Husbandry Department of the State of Bihar. This had taken place during the years 1977-78 to 1995-96. A similar situation prevailed in the Education, Co-operation and Fisheries Departments. It is agreed by all the counsel that an in-depth investigation is required to be made. The only controversy between counsel on either side is whether the High Court, in exercise of its power under Article 226, could take the investigation away from the State police and entrust it to the Central Bureau of Investigation(CBI).

4. Shri. F. S. Nariman, learned senior counsel appearing for the State, contended that, by reason of Entry 80 of List, I of the Seventh Schedule to the Constitution and Section 6 of the Delhi Special Police Act, 1946 (Act 26 of 1946), without the consent of the appropriate State Government no investigating agency other than the State police could investigate an offence committed in the State. The High Court, while exercising power under Article 226 should have kept in mind this limitation. The limitation did not apply to this Court exercising power under Article 142 of the Constitution to do complete justice. The High Court therefore, was not correct in law in directing the C.B.I. to investigate the allegations of defalcation of public funds, large-scale misappropriation, fabrication and destruction of the record etc. Shri P. P. Rao, learned senior counsel, contended that the State Government had not delayed in instituting the investigation. As soon as the matter was brought to the knowledge of the Chief Minister, he took prompt action, suspended the erring officers and constituted an Enquiry to submit periodical reports. The State, Mr. Rao submitted, would not attempt to shield any corrupt officer from being prosecuted or proceeded with departmentally. The prompt action taken established the sincerity of the State Government to see that proper investigation was carried out. There was no allegation against the State Police. The High Court could have preserved control and supervised the investigation by the State Police. Instead, it divested the State police of its statutory power and entrusted the same to the C.B.I which upset the distribution of powers under the Constitution. Shri Soli J. Sorabjee, learned senior counsel, supporting all the contentions submitted that the power was traceable to Entry 39 of the Government of India Act. 1935. The State police could not be divested of the power. The investigation by the

Central agency could not have been ordered by the High Court without the consent of the State Government.

5. On the other hand, Shri Shanti Bhushan, learned senior counsel leading for the respondents, contended that the power of the High Court was unlimited. There were self-imposed limitations on the exercise of that power. In view of the enormity of the fraudulent transactions that had taken place within the administration of the State, they needed to be investigated and the erring officers brought to book by an independent agency. The people's confidence would be best assured if the investigation was conducted by an independent agency. There was no reason for the C.B.I. to either falsely implicate any innocent person or shield any real culprit. Therefore, in a democratic set up, when a cloud was cast on the administration, it would be appropriate for an independent agency to conduct the investigation. The High Court, therefore in exercise of its discretionary power under Article 226 had rightly directed the C.B.I to investigate these fraudulent transactions involving more than Rs. 500 crores - an estimate given by the State itself. Shri Arun Jaitley, learned senior counsel, criticised the inaction on the part of the State police in investigation and laying charge sheets against erring officers on the basis of the evidence on record despite the Income tax Department's information in this behalf through the State's Vigilance Commission. Shri Rajeev Dhavan, Learned senior counsel, supported the judgment on the argument of public confidence and Shri O. P. Sharma, learned senior counsel, echoed it.

6. In view of the contentions, the question that arises for consideration is whether this Court would be justified in interfering with the order passed by the High Court. The parameters of the power of the High Court under Article 226 of the Constitution to direct an investigation by the C.B.I. though without the consent of the concerned State, is the subject matter of a reference pending consideration of a Constitution Bench of five Judges of this Court. (This is in W.P. Nos. 531-36 of 1985 by order dated March 10, 1989.) Therefore, the frontiers of the power of the High Court under Article 226 to give directions to the C.B.I. to investigate into offences without the State's consent, are already before this Court and shall be gone into. All arguments addressed by learned counsel on either side would be considered and dealt with by the Constitution Bench.

7. The only question then is whether this is a fit case for our interference under Article 136 of the Constitution? The exercise of the power under Article 226 of the Constitution in a public interest litigation was not to give any advantage to political party or group of people, as apprehended by counsel for the appellants. It was also not to cast a slur on the State police. It was done to investigate corruption in public administration misconduct by the bureaucracy, fabrication of official records, and misappropriation of public funds by an independent agency that would command public confidence. We are therefore, of the opinion that the direction given by the High Court appears to be just and proper and calls for no real interference.

8. The question then is whether the direction given by the High Court needs any modification. It is pointed out by Shri Nariman that the State police have already instituted 40 First Information Reports against different persons, arrested 44 offenders and attached the properties of 239 persons. There is no gainsaying that all persons involved in these offences need to be identified. Not only all the aforementioned persons but also all other persons involved need to be dealt with according to law. This modification shall be made.

9. We are also of the opinion that, to alleviate the apprehensions of the State about the control of the investigation by the C.B.I it should be under the overall control and supervision of the Chief Justice of the Patna High Court. The C.B.I. officers entrusted with the investigation shall, apart from the

concerned criminal Court, inform the Chief Justice of the Patna High Court from time to time of the progress made in the investigation and may, if they need any direction in the matter of conducting the investigation, obtain them from him. The learned Chief Justice may either post the matter for directions before a Bench presided over by him or constitute any other appropriate Bench. After the investigation is over and reports are finalised, as indicated by the Division Bench of the High Court in the impugned judgment, expeditious follow-up action shall be taken. The High Court and the State Government shall co-operate in assigning adequate number of special Judges to deal with the cases expeditiously so that no evidence may be lost.

10. The order of the Division Bench of the High Court in paragraph 54 to the effect that investigation by the State police in cases already instituted shall remain suspended, is modified. The entire investigation now stands entrusted to the C.B.I. as aforesaid. The C.B.I. is directed to take over the investigation already made by the State police, inclusive of the FIRs, arrests and attachments aforementioned, and deal appropriately therewith.

11. The appeals are disposed of accordingly. No. costs. Order accordingly.