

SUPREME COURT OF INDIA

Central Bureau of Investigation and

Vs.

Rajesh Gandhi

(K Ramaswamy and G Pattanaik JJ.)

07.10.1996

JUDGMENT

MRS.SUJATA V. MANOHAR.J.

Leave granted.

Respondent No.1 is a Director of M/s. Continental Transport and Construction Corporation Limited. Some of the other directors of the company are one Ramesh Gandhi and one Mahesh Gandhi. The first respondent and the said two directors are brothers. In or about February, 1993 a raid was conducted by the Income Tax Department, Dhanbad on the office, residence and the factory Premises of M/s. Continental Transport and Construction Corporation Limited and the first respondent as well as the other directors of the said company. Certain documents were seized during the raids. The documents so seized were stored by the then Assistant Director (Investigation), Department of Income Tax, Dhanbad in one of the steel almirahs kept in his chamber. During the night of 8th/9th March, 1993 the documents seized were burnt after breaking open the office's steel almirah in which documents were kept. In respect of this incident local police registered an FIR bearing No.159 dated 9.3.1993 in Police Station, Dhanbad, Dhansar under Sections 457, 436, 427, 201 and 120-B of the Indian Penal Code and under Section 4 of the Prevention of Damage to the Public Properties Act, 1984 against, inter alia, the first respondent and other persons. The investigation was carried on by the local police.

Thereafter, at the request and with the consent of the State of Bihar as per notification dated 26.7.1994, the Central Government by its notification/order dated 26.10.1994 issued under Section 6 of the Delhi Special Police Establishment Act, 1946 authorised the first appellant, Central Bureau of Investigation, to investigate the said offences. Hence the investigation Of the said offences was transferred to the first appellant and a fresh case RC.1(S)/95(D) was registered on 3.1.1995 against the first respondent and other accused persons incorporating the offences mentioned in FIR No.159/93. The first respondent filed a writ petition in the Patna High Court challenging the said notifications of 2.6.1994 and 26.10.1994. The present appeal arises from an order of a learned Single Judge of the Patna High Court quashing the said notifications.

This is, however not the first such proceeding. Earlier respondent No.1 herein and other accused persons filed a writ petition on or about 7.2.1995 in the High Court of Calcutta in respect of the same criminal proceedings. The Calcutta High Court by its order dated 9.2.1995 disposed of the writ petition by directing that the venue of the investigation be shifted from Dhanbad to Ranchi and the investigating officers be changed. This order, however, was set aside by this Court in S.L.P. (Crl.) No.1155 of 1995. Thereafter, M/s. Continental Transport and Construction Corporation Limited and one of the director, Ramesh Gandhi, the brother of respondent No.1, filed a writ petition before the Ranchi Bench of the Patna High Court praying, inter alia, for a writ quashing the FIR dated 3rd of January, 1995 lodged in the court of the Special Judicial Magistrate, C.B.I. cases, Dhanbad and for quashing the notifications of 2.6.1994 and 26.10.1994. The Ranchi Bench of the Patna High Court, however, dismissed the writ petition by a reasoned judgment and order dated 10.5.1995. The first respondent than filed a writ petition before the Patna High Court for identical reliefs of quashing the said notifications. The Patna High Court allowed the writ petition holding that the impugned notifications must disclose reasons as to why the investigation was being entrusted to the Delhi Special Police Establishment. This decision is under challenge before us.

In the first place, the same two notifications were challenged before the Ranchi Bench of the same High Court. A learned Single Judge of the High Court by a reasoned order declined to quash the two notifications. We fail to appreciate how another learned Single Judge of the same High Court has quashed the same notifications in disregard of the earlier judgment. Secondly, there is a clear attempt on the part of first respondent as well as other accused to stall investigation by the C.B.I., looking to the course of conduct adopted by them starting with the filing of a writ petition in the Calcutta High Court when C.B.I. had registered an F.I.R. before the Special Judicial Magistrate C.B.I. Cases, at Dhanbad.

There is no merit in the pleas raised by the first respondent either. The decision to investigate or the decision on the agency which should investigate, does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with. We also fail to see any provision of law for recording reasons for such a decision. The notification dated 2.6.1994 is issued by the Government of Bihar (Police Department) by which in exercise of powers under Section 6 of the Delhi Special Police Establishment Act, 1946, Governor of Bihar was pleased to

consent and extend the powers and Jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Bihar in connection with investigation of the concerned Police Station, on case No.159 of 9.3.1993 in the District of Dhanbad, under Sections 457, 436, 427, 201 and 120-B, Indian Penal Code and conspiracy arising out of the same and any other offence committed in course of the same. The notification of 26.10.1994 is issued by the Government of India, Ministry of Personnel in exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 whereby the Central Government with the consent of the State Government of Bihar in their notification dated 2.6.1994 extended the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Bihar for investigation of offences under Section 457, 436, 427/120-8 and 201 I.P.C. and Section 4 of the Prevention Of Damages to Public Property Act, 1984 registered at Dhanbad Police Station, Dhansar, Bihar in their case No.159 dated 9.3.1933 and any other offences, attempts, abetment and conspiracy in relation to or in connection with the said offence committed in the course of the same transactions or arising out of the same fact or facts in relation to the said case. There is no provision in law under which, while granting consent or extending the powers and jurisdiction of the Delhi Special Police Establishment to the specified State and to any specified case any reasons are required to be recorded on the face of the notification. The learned Single Judge of the Patna High Court was clearly in error in holding so. If investigation by the local police is not satisfactory, a further investigation is not precluded. In the present case the material on record shows that the investigation by the local police had not satisfactory. In fact the local police had filed a final report before the Chief Judicial Magistrate Dhanbad. The report, however, was pending and had not been accepted when the Central Government with the consent of the State Government issued the impugned notification. As a result. The C.B.I. has been directed to further investigate the offences registered under the said F.I.R. with the consent of the State Government and in accordance with law. Under Section 173 (8) of the Cr.P.C. 1973 also, there is an analogous provision for further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate.

We fail to see any requirement of law under which the reasons for further investigation by the C.B.I. are required to be recorded in the notifications of the kind in question. The reasons can be shown independently. The appeal is, therefore, allowed and the impugned judgment and order of the Single Judge of the Patna High Court is set aside and the writ petition is dismissed.