

# SUPREME COURT OF INDIA

Shahid Balwa

Vs.

Union of India

(G.S.Singhvi and K.S. Radhakrishnan JJ.)

03.09.2013

## JUDGMENT

### **K.S. RADHAKRISHNAN, J.**

1. We are, in these cases, called upon to examine the question whether two orders passed by this Court on 11.04.2011 and 09.11.2012 in Civil Appeal No.10660 of 2010, in exercise of powers conferred on this Court under Articles 136 and 142 of the Constitution of India, while monitoring the investigation of 2G related cases, are liable to be recalled, de hors the rights guaranteed to the Petitioners to invoke the jurisdiction of this Court under Articles 32 and 136 of the Constitution of India, if aggrieved by the orders passed by the Special Court dealing with 2G Spectrum case.

2. Civil Appeal No.10660 of 2010, in which the above-mentioned orders have been passed, was filed under Article 136 of the Constitution of India by special leave, praying for a Court monitored investigation by the Central Bureau of Investigation (CBI) or by a Special Investigating Team into what was described as the 2G Spectrum Scam and also for a direction to investigate the role played by A. Raja, the then Union Minister for Department of Telecommunications (DoT), senior officers of DoT, middlemen, businessmen and others. Before this Court, it was pointed out that the CBI had lodged a first information report on 21.10.2009 alleging that during the years 2000-2008 certain officials of the DoT entered into a criminal conspiracy with certain private companies and misused their official position in the grant of Unified Access Licenses causing wrongful loss to the nation, which was estimated to be more than Rs.22,000 crores. CBI, following that, registered a case No.RC-DAI-2009-A-0045(2G Spectrum Case) on 21.10.2009 under Section 120B IPC, 13(1)(d) of the PC Act against a former Cabinet Minister and others.

3. Before this Court parties produced large number of documents, including the Performance Audit Report (Draft and Final) prepared by the Comptroller and Auditor General of India (CAG) on the issue of licence and allocation of 2G Spectrum by DoT, Ministry of Communications and Information and Technology for the period from 2003-2004 to 2009-2010. Report of the CAG, was submitted to the President of India, as per Article 151 of the Constitution of India. The Central Vigilance Commission (CVC) also conducted an inquiry under Section 8(d) of the Central Vigilance Commission Act, 2003 and noticed grave irregularities in the grant of licences. The CVC on 12.10.2009 had forwarded the enquiry report to the Director, CBI to investigate into the matter to establish the criminal conspiracy in the allocation of 2G Spectrum under UASL policy of DoT and to bring to book all wrongdoers.

4. After taking into consideration of all those factors, including the report of the CVC as well as the findings recorded by the CAG, this Court agreed for a Court monitored investigation and held as follows:

“We are, prima facie, satisfied that the allegations contained in the writ petition and the affidavits filed before this Court, which are supported not only by the documents produced by them, but also the report of the Central Vigilance Commission, which was forwarded to the Director, CBI on 12.10.2009 and the findings recorded by the CAG in the Performance Audit Report, need a thorough and impartial investigation. However, at this stage, we do not consider it necessary to appoint a Special Team to investigate what the appellants have described as 2G Spectrum Scam because the Government of India has, keeping in view the law laid down in Vineet Narain’s case and others passed in other cases, agreed for a Court monitored investigation.”

5. This Court, with a view to ensure a comprehensive and co-ordinated investigation by the CBI and the Enforcement Directorate, gave the following directions vide its order dated 16.12.2010:

i) The CBI shall conduct thorough investigation into various issues highlighted in the report of the Central Vigilance Commission, which was forwarded to the director, CBI vide letter dated 12.10.2009 and the report of the CAG, who have prima facie found serious irregularities in the grant of licences to 122 applicants, majority of whom are said to be ineligible, the blatant violation of the terms and conditions of licences and huge loss to the

public exchequer running into several thousand crores. The CBI should also probe how licences were granted to large number of ineligible applicants and who was responsible for the same and why the TRAI and the DoT did not take action against those licensees who sold their stake/equities for many thousand crores and also against those who failed to fulfill rollout obligations and comply with other conditions of licence.

ii) The CBI shall conduct the investigation without being influenced by any functionary, agency or instrumentality of the State and irrespective of the position, rank or status of the person to be investigated/probed.

iii) The CBI shall, if it has already not registered first information report in the context of the alleged irregularities committed in the grant of licences from 2001 to 2006-2007, now register a case and conduct thorough investigation with particular emphasis on the loss caused to the public exchequer and corresponding gain to the licensees/service providers and also on the issue of allowing use of dual/alternate technology by some service providers even before the decision was made public vide press release dated 19.10.2007.

iv) The CBI shall also make investigation into the allegation of grant of huge loans by the public sector and other banks to some of the companies which have succeeded in obtaining licences in 2008 and find out whether the officers of the DoT were signatories to the loan agreement executed by the private companies and if so, why and with whose permission they did so.

v) The Directorate of Enforcement/ concerned agencies of the Income Tax Department shall continue their investigation without any hindrance or interference by any one.

vi) Both the agencies, i.e. the CBI and the Directorate of Enforcement shall share information with each other and ensure that the investigation is not hampered in any manner whatsoever.

vii) The Director General, Income Tax (Investigation) shall, after completion of analysis of the transcripts of the recording made pursuant to the approval accorded by the Home Secretary, Government of India, hand over the same to CBI to facilitate further investigation into the FIR already registered or which may be registered hereinafter.”

6. CBI and the Enforcement Directorate then used to apprise this Court of the various stages of investigation and this Court, on 10.02.2011, passed an order stating that since this Court is monitoring the investigation of 2G Spectrum Scam no court shall pass any order which may, in any manner, impede the investigation being carried out by the CBI and the Directorate of Enforcement.

7. Learned Attorney General of India, it was pointed out, had written to the Law Minister on the issue of creation of separate Special Court for dealing with the cases relating to 2G Scam and, for the said purpose, the Law Minister, in turn, had written to the Chief Justice of the Delhi High Court seeking nomination of a Special Court for the said purpose. Learned Attorney General submitted before this Court on 16.03.2011 that the Registrar General of the High Court of Delhi had conveyed its decision to nominate Shri O.P. Saini, an officer of the Delhi Higher Judicial Service, as the Special Judge to take up the trial of cases relating to what has been described as 2G Scam. The Court was also informed that two separate notifications would be issued by the Central Government in terms of Section 3(1) the PC Act, 1988 and Section 43(1) of the Prevention of Money Laundering Act, 2002 for establishment of the Special Court to exclusively try the offences relating to 2G Scam and other related offences. Following that, two notifications dated 28.03.2011 were published in the Gazette of India Extraordinary on Monday, the 28th March, 2011.

8. The CBI submitted before this Court on 01.04.2011 that a notification had been issued under Section 6 of the Delhi Police Establishment Act by the State Government for entrusting the case relating to death of Sadiq Batcha to the CBI and the CBI had indicated that it had no objection to take up the investigation. The CBI also submitted before this Court that a Special Public Prosecutor had to be appointed to lead and supervise the prosecution of the case relating to the 2G Scam for which the CBI had suggested the name of Shri U.U. Lalit, senior advocate of this Court.

9. The CBI, after completion of the investigation in the main case, noticed the commission of various other offences during 2007-09 punishable under Sections 120-B, 420, 468, 471 of IPC against the accused persons, namely, Shri A. Raja and others and the following substantive offences were stated to have been made out against the following accused persons:

“a) Sh. A. Raja, then MOC&IT – the offence punishable u/s 420, 468, 471 IPC & 13(2) r/w 13(1)(d) PC Act, 1988.

b) Sh. Siddartha Behura, then Secretary, Department of Telecom- the offence punishable u/w 420 IPC & 13(2) r/w 13(1)(d) PC Act, 1988.

c) Sh. R.K. Chandolia, then PS to MOC&IT- the offence punishable u/s 420 IPC & 13(2) r/w 13(1)(d) PC Act.

d) Sh. Shahid Usman Balwa, Director, M/s Swan Telecom Pvt. Ltd.; Sh. Vinod Goenka, Director, M/s Swan Telecom Pvt. Ltd. and M/s Swan Telecom Pvt. Ltd. (now M/s Etisalat DB Telecom Pvt. Ltd) through its Director – offences punishable u/s 420/468/471 IPC.

e) Sh. Sanjay Chandra, Managing Director, M/s Unitech Ltd. and M/s Unitech Wireless (Tamil Nadu) Pvt. Ltd. through its Director –offences punishable u/s 420 IPC.

f) Sh. Gautam Doshi, Group Managing Director, Reliance ADA Group, Sh. Hari Nair, Senior Vice President of Reliance ADA Group & Sh. Surendra Pipara, Senior Vice President of Reliance ADA Group & M/s Reliance Telecom Ltd. through its Director – offences punishable under section 109 r/w 420 IPC.”

10. The CBI, on the basis of the investigation conducted, submitted a charge-sheet against the above-mentioned persons/companies before a Special Judge on 02.04.2011 and Special Judge took cognizance of the aforesaid offences on the same day.

11. This Court undertook the monitoring of the investigation in view of the prayers made by the appellants and the request made by the prosecution agency and the Government of India, having regard to the larger public interest involved and the necessity of a proper investigation and also with the ultimate object of unearthing the crime.

12. Counsel appearing for the CBI suggested to this Court, on 11.4.2011, the name of Shri U.U. Lalit, senior advocate, for the conduct of the criminal prosecution in the case on behalf of the CBI as well as the Directorate of Enforcement and the Court on that date inter alia ordered as follows:

“We also make it clear that any objection about appointment of Special Public Prosecutor or his assistant advocates or any prayer for staying or impeding the progress of the Trial can be made only before this Court and

no other Court shall entertain the same. The trial must proceed on a day-to-day basis.

All these directions are given by this Court in exercise of its power under Article 136 read with Article 142 of the Constitution and in the interest of holding a fair prosecution of the case.”

13. We found, in spite of the order passed by this Court on 11.04.2011 that no Court should entertain any prayer for staying or impeding the progress of the trial, large number of writ petitions were seen filed before the Delhi High Court praying for stay of the trial proceedings on one or the other ground. The CBI noticing that entertaining of those cases would violate the order passed by this Court on 11.04.2011, filed an application before this Court for summoning the records of Writ Petition (Criminal) No.1587 of 2012, Writ Petition (Criminal) No.1588 of 2012, Writ Petition (Criminal) No.913 of 2012, Writ Petition (Criminal) No.111 of 2012, Writ Petition (Criminal) No.207 of 2012, Writ Petition (Criminal) No.1478 of 2012, Writ Petition (Criminal) No.1751 of 2012, Writ Petition (Criminal) No. 1752 of 2012, Writ Petition (Criminal) No. 1754 of 2012, Writ Petition (Criminal) No.206 of 2012, Writ Petition (Criminal) No. 159 of 2012, Writ Petition (Criminal) No. 208 of 2012, Criminal M.C. No. 4197 of 2011, Criminal M.C. No.67 of 2012, Writ Petition (Criminal) No.129 of 2012, Writ Petition (Criminal) No.656 of 2012, Criminal M.C. No.4199 of 2011, Writ Petition (Criminal) No.467 of 2012 and Criminal M.C. No.1060 of 2012 pending before the Delhi High Court and also prayed for stay of all the proceedings of these cases.

14. This Court felt entertaining those cases by the Delhi High Court, at this stage, would violate the order passed by this Court on 11.4.2011, passed an order on 09.11.2012 staying those proceedings pending before the Delhi High Court.

15. Shri Ram Jethmalani, learned senior counsel, appearing for the petitioner in Writ Petition (C) No.548 of 2012, prayed for recalling orders dated 11.04.2011 and 09.11.2012 on the ground that those orders would violate the rights guaranteed to the petitioners under Section 482 of the Cr.P.C. and Articles 226 and 227 of the Constitution of India for moving the High Court. Learned senior counsel also submitted that remedy, if at all, available under Article 32 is limited to safeguarding the rights guaranteed under Part III of the Constitution while the remedies available under Articles 226 and 227 of the Constitution have a wider scope, which cannot be taken away by the impugned orders passed by this Court while monitoring the 2G Scam.

16. Learned senior counsel also submitted that the impugned orders have the effect of taking away the power of the Court in granting reasonable adjournments under Section 309 of the Cr.P.C. and submitted neither sub-section (4) of Section 4 nor Section 19(3) of the PC Act can take away that right of the petitioners, but has been effectively curtailed by the impugned orders passed by this Court. Learned senior counsel also submitted that this Court exercising powers under Articles 136 and 142 of the Constitution, has the power to only monitor the investigation and once the investigation is over and charge-sheet has been filed, this Court should leave the matter to the trial court safeguarding the rights of parties in questioning the correctness or otherwise of the orders passed by the trial Court in appropriate Forums. Reference was made to the decision of this Court in *Rajiv Ranjan Singh 'Lalan' (VIII) and Another v. Union of India and others* (2006) 6 SCC 613 and *Vineet Narain and Others v. Union of India and Another* (1996) 2 SCC 199.

17. Shri Mukul Rohtagi, learned senior counsel, submitted that right to fair trial is a right guaranteed to the parties under Articles 14 and 21 of the Constitution of India and the impugned order has the effect of negating those rights by shutting out all remedies available to the parties under Articles 226 and 227 of the Constitution of India to move the High Court. Learned senior counsel placed reliance on the Judgment of this Court in *A.R. Antulay v. R.S. Nayak and another* (1988) 2 SCC 602 and submitted that in appropriate cases this Court has got the power to recall its earlier order in the interest of justice, if it is satisfied that its directions will result in the deprivation of fundamental rights guaranteed to the citizens or any other legal rights. Placing reliance on the Judgment of this Court in *L. Chandra Kumar v. Union of India and others* (1997) 3 SCC 261 and *Shalini Shyam Shetty and another v. Rajendra Shankar Patil* (2010) 8 SCC 600, learned senior counsel submitted that the rights conferred under Articles 226 and 227 of the Constitution of India are the basic structure of the Constitution and the same cannot be taken away by exercising powers under Article 136 and 142 of the Constitution of India.

18. Shri Harish Salve, learned senior counsel, submitted that the power of the Court to monitor the criminal investigation should stop once the charge-sheet has been filed, leaving the trial court to proceed with trial in accordance with the law. In support of his contention reliance was placed on the Judgment of this Court in *Jakia Nasim Ahesan and another v. State of Gujarat and others* (2011) 12 SCC 302 and the Judgment in *Ankul Chandra Pradhan v. Union of India and others* (1996) 6 SCC 354.

19. Shri K.K. Venugopal, learned senior counsel appearing for the CBI, submitted that there are no justifiable reasons for recalling the impugned orders since those

orders had been passed in the larger public interest and that too based on the request made by the Government of India virtually inviting this Court's intervention for monitoring the investigation relating to 2G Scam. Learned senior counsel referred to the CAG report as well as the report sent by the CVC to the CBI and submitted that those reports would highlight the magnitude of loss suffered by the public exchequer, which has been revealed by the investigation conducted by the CBI. Learned senior counsel also submitted that this Court has undertaken monitoring of the investigation due to the involvement of highly placed officers of DoT and the then Union Minister for Telecommunications, Members of Parliament, bureaucrats and businessmen.

20. Learned senior counsel also submitted that this Court, while issuing the orders dated 11.04.2011 or 09.11.2012, has neither interfered with the proceedings pending before the Special Court, nor attempted to supervise or investigate the trial proceedings. On the other hand, this Court only ensured that the progress of the trial be not impeded and the trial should go on day-to-day basis. Learned senior counsel also submitted that this Court has reserved its powers to entertain any challenge against the orders passed by the Special Judge under Articles 136, 32 as well as Article 142 of the Constitution and hence, no prejudice is caused to the petitioners.

21. We may, at the very outset, point out that CBI as well as the Enforcement Directorate is yet to complete the investigation of the cases relating to 2G Scam and the case which is being tried by the Special Judge is only one among them, wherein the charge-sheet has been filed and the trial is in progress. This Court, taking into consideration the width and ambit of the investigation which even spreads overseas and the larger public interest involved, passed the orders impugned, reserving the right of all, including the accused persons, to move this Court if their prayer would amount to staying or impeding the progress of the trial. In case they have any grievance against the orders passed by the Special Judge during trial, they are free to approach this Court so that the progress of the trial would not be hampered by indulging in cumbersome and time consuming proceedings in the other Forums, thereby stultifying the preemptory direction given by this Court for day-to-day trial.

22. Article 136 read with Article 142 of the Constitution of India enables this Court to pass such orders, which are necessary for doing complete justice in any cause or matter pending before it and, any order so made, shall be enforceable throughout the territory of India. Parties, in such a case, cannot invoke the jurisdiction under Articles 226 or 227 of the Constitution of India or under Section 482 Cr.P.C. so as

to interfere with those orders passed by this Court, in exercise of its constitutional powers conferred under Article 136 read with Article 142 of the Constitution of India. Or, else, the parties will move Courts inferior to this Court under Article 226 or Article 227 of the Constitution of India or Section 482 Cr.P.C., so as to defeat the very purpose and object of the various orders passed by this Court in exercise of its powers conferred under Article 136 read with Article 142 of the Constitution of India.

#### PUBLIC INTEREST:

23. Public Interest compelled this Court to take up the investigation in 2G related cases in exercise of its powers under Article 136 read with Article 142, that too, on a request made by the Central Government. CAG is stated to be the most important Officer under the Constitution of India and his duty, being the guardian of the public Purse, is to see that not a farthing of it is spent without the authority of the Parliament. Article 149 of the Constitution of India empowers the CAG to perform such duties and exercise such powers in relation to the accounts of the Union and the State and Audit plays an important role in the scheme of Parliamentary Financial Control and it is also directed towards discovering waste, extravagance and disallow any expenditure violating the Constitution, or any Law. CAG, in its report submitted to the President of India under Article 151 of the Constitution of India, has commented upon the manner in which the Unified Access Licences were granted and projected that it caused wrongful loss to the Government to the tune of Rs.1.76 lac crore. Of course, some acrimony had erupted between the Central Government and the CAG's estimate of loss, but it is reported to be substantial. CVC also conducted an enquiry under Section 8(d) of the Central Vigilance Act, 2003 and noticed grave irregularities in the grant of licences. CVC, on 12.10.2009, had forwarded the enquiry report to that effect to the Directorate of CBI.

24. The nation and the people of this country are seriously concerned with the outcome of cases involving larger public interest, like one concerning 2G and this Court, as the guardian of the Constitution, has got the duty and obligation to see that the larger public interest and the interest of the nation is preserved and protected. When larger public interest is involved, it is the responsibility of the Constitutional Court to assure judicial legitimacy and accountability. Public interest demands timely resolution of cases relating to 2G Scam. Prolonged litigation undermines the public confidence and weakens the democracy and rule of law.

25. The Parliament, in its wisdom, has also noticed the necessity of early disposal of cases relating to bribery and corruption. Section 4(4) of the Prevention of Corruption Act, 1988 reflects the will of the Parliament that a Special Judge shall hold the trial of an offence on day- to-day basis, notwithstanding anything contained in the Code of Criminal Procedure. Section 19(3)(c) also states that, notwithstanding anything contained in the Code of Criminal Procedure, no Court shall stay the proceedings under the Prevention of Corruption Act on any other ground and no Court shall exercise the powers of the revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings. Statutory provisions highlight the imperative need to eradicate the evils of bribery and corruption. Larger public interest should have precedence over the prayers of the petitioners, especially when this Court has safeguarded their rights and given freedom to them to move this Court, either under Article 136 or Article 32 of the Constitution of India. Article 139A also reflects the larger public interest, which enables this Court to transfer certain cases which involve substantial questions of law, from one High Court to another or to this Court, in such an event, it cannot be contended that the parties are deprived of their rights to adjudicate their grievances under Articles 226, 227 or Section 482 Cr.P.C., before the High Court.

#### COURT MONITORED INVESTIGATION

26. Monitoring of criminal investigation is the function of investigating agency and not that of the Court – either of the superior Court or of the trial Court. But unsolved crimes, unsuccessful prosecution, unpunished offenders and wrongful convictions bring our criminal justice system in disrepute. Crores and crores of tax payers' money is being spent for investigating crimes in our country since every such incident is a crime against the society. When the persons involved in the crime wield political power and influence, the possibility of putting pressure on the investigating agency, which is no more independent in our country, is much more. Common people will be left with the feeling that they can get away with any crime which tarnish the image not only of the investigating agency but judicial system as well. Once investigation fails, Court will face with a fait accompli. Proper and uninfluenced investigation is necessary to bring about the truth. Truth will be a casualty if investigation is derailed due to external pressure and guilty gets away from the clutches of law.

27. More and more demands are now coming before the Courts for its monitoring of investigation relating to crimes committed by influential persons and persons who have political influence, with the apprehension that they could derail the investigation. Courts in public interest sometime have to take such a course in the

larger public interest. That burden this Court has discharged in various cases like Vineet Narayan's case and Gujarat Communal Riot's case, etc. This Court has taken the consistent view that once charge-sheet is submitted in the proper Court, the process of Court monitoring investigation comes to an end and it is for that Court to take cognizance of the offence and deal with the matter. But, so far as the present case is concerned, we have already indicated that charge-sheet has been filed only in one among the various 2G related cases. This Court, while passing the impugned order, only directed speedy trial and, that too, on a day-to-day basis which cannot be termed as interference with the trial proceedings.

28. We also, therefore, find no basis in the contention of the petitioners that the orders dated 11.4.2011 and 9.11.2012 have the effect of monitoring the trial proceedings. No Court, other than the Court seized with the trial, has the power to monitor the proceedings pending before it. Order dated 11.4.2011 only facilitates the progress of the trial by ordering that the trial must proceed on a day-to-day basis. Large backlog of cases in the Courts is often an incentive to the litigants to misuse of Court's system by indulging in unnecessary and fraudulent litigation, thereby delaying the entire trial process. Criminal justice system's procedure guarantees and elaborateness sometimes give, create openings for abusive, dilatory tactics and confer unfair advantage on better heeled litigants to cause delay to their advantage. Longer the trial, witnesses will be unavailable, memories will fade and evidence will be stale. Taking into consideration all those aspects, this Court felt that it is in the larger public interest that the trial of 2G Scam be not hampered. Further, when larger public interest is involved, it is the bounden duty of all, including the accused persons, who are presumed to be innocent, until proven guilty, to co-operate with the progress of the trial. Early disposal of the trial is also to their advantage, so that their innocence could be proved, rather than remain enmeshed in criminal trial for years and unable to get on with their lives and business.

29. We fail to see how the principle laid down by this Court in A.R. Antulay's case (supra) would apply to the facts of these cases. We have found no error in the orders passed by this Court on 11.04.2011 or on 09.04.2012. Therefore, the question of rectifying any error does not arise. On the other hand, as we have already indicated, the purpose and object of passing those orders was for a larger public interest and for speedy trial, that too on day-to-day basis which has been reflected not only in the various provisions of the PC Act, 1988 but also falls within the realm of judicial accountability.

30. We also find no reason to lay down any guidelines as prayed for by the petitioners in a Court monitored investigation. In a Court monitored investigation, as already pointed out the Court is not expected to interfere with the trial proceedings. The conduct of the trial is the business of the trial judge and not the court monitoring the investigation. A superior court exercising the appellate power or constitutional power, if gives a direction to conduct the trial on day-to-day basis or complete the trial in a specific time by giving direction is not interfering with the trial proceedings but only facilitating the speedy trial, which is a facet of Article 21 of the Constitution of India. That being the factual situation in these cases, the principle laid down by this Court in Rajiv Ranjan Singh “Lalan” VI and another v. Union of India and others (2006) 1 SCC 356, Brij Narain Singh v. Adya Prasad (2008) 11 SCC 558 and Ankul Chandra Pradhan (supra), are not applicable.

31. We, therefore, find no good reason either to frame guidelines to be followed by a constitutional court in relation to monitoring of criminal investigation or any legal infirmity in the orders passed by this Court on 11.04.2011 or 09.04.2012. Writ Petitions lack merits and they are accordingly dismissed, so also IA Nos.59, 61, 63 and 68 in Civil Appeal No.10660 of 2010.