

Ratan N. Tata

v.

Union of India & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE V.
GOPALA GOWDA

Writ Petition (Civil) No. 398 Of 2010 With Writ Petition (Civil) No. 16 Of
2011 | 17-10-2013

G.S. Singhvi, J.

1. On receipt of a complaint by the Finance Minister that Ms. Nira Radia, who was an agent of foreign intelligence agency and was indulging in anti national activities and had built up a business empire of Rs.300 crores within a period of nine years, a decision was taken that the matter needs to be probed. When the complaint reached the Director General of Income Tax (Investigation) [DG (IT)], Delhi, he mooted a proposal for surveillance of telephone lines of Ms. Nira Radia and her associates. The Central Board of Direct Taxes (CBDT) forwarded the proposal to the Home Secretary, Government of India, who granted the required permission. Between 19.8.2008 and 9.7.2009, many such proposals were submitted to the Union Home Secretary and he accorded the necessary permission from time to time. In the first phase, the surveillance lasted for 120 days. In the second phase, the surveillance lasted for about 60 days.

2. After four months of the cessation of surveillance, DG (IT) sent letter dated 16.11.2009 to Director, Intelligence Bureau informing that analysis of the intercept suggested that some conversations were quite sensitive. He also informed about this to CBDT. On the same day, the Central Bureau of Investigation (CBI) sent a communication to DG (IT) and asked for information relating to surveillance done on the telephone lines of Ms. Nira Radia. After some correspondence, DG (IT) sent copies of the recording to CBI. On 20.5.2010, copy of the recordings consisting of 5800 calls of Ms. Radia for the period from 20.8.2008 to 9.7.2009 was handed over to CBI.

3. In August, 2010, Centre for Public Interest Litigation filed a writ petition before the Delhi High Court for ordering a Court monitored investigation by CBI or a special investigating team in what was termed as “2G Spectrum Scam” for unearthing the role of the then Union Minister for Department of Tele Communications, senior officers of that Department, middlemen, businessmen and others. The writ petition was dismissed by the Division Bench of the High Court. The special leave petition filed against the order of the High Court was entertained by this Court and converted into Civil Appeal No.10660/2010. After hearing the parties, the Court passed order dated 16.12.2010, the operative portion of which reads thus:

“(i) 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. CBI should also probe how licences were granted to large number of ineligible applicants and who was responsible for the same and why TRAI and DoT did not take action against those licensees who sold their stakes/equities for many thousand crores and also against those who failed to fulfil rollout obligations and comply with other conditions of licence.

(ii) 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) 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) 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 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/agencies concerned of the Income Tax Department shall continue their investigation without any hindrance or interference by anyone.

(vi) Both the agencies i.e. 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.”

4. In November, 2010 some news magazines published portions of the conversation which Ms. Radia had with politicians, corporates, lobbyists, bureaucrats and journalists. Shri Ratan Tata, whose name figured in some of these publications filed Writ Petition No.398/2010 under Article 32 of the Constitution with the following prayers:

“(a) Issue a writ of mandamus and / or any other suitable writ order or direction under Article 32 of the Constitution of India directing the Respondents to take all such steps as may be necessary to immediately retrieve and recover, as far as possible, all the recordings that have been removed from their custody;

(b) Issue a writ order or direction under Article 32 of the Constitution directing the Respondents to conduct (either through Respondent No.4 or any other authority) a thorough inquiry into the manner in which these secret recordings

were, contrary to the rules, made available and / or became available to those not authorized to so receive the recordings and file a report thereon before this Hon'ble Court;

(c) Issue a writ order or direction under Article 32 of the Constitution directing the Respondents, their servants and agents to ensure that no further publication of these recordings - either as audio files through the internet or any print as transcripts appears in any media - print or electronic and for that purpose, take steps as may be necessary, including but not limiting to steps under The Cable Television Networks (Regulation) Act, 1995 and The Information Technology Act, 2000, the Code of Criminal Procedure, 1973 read with the Indian Penal Code, 1860 and any other law, as may be necessary.”

5. After some time, Centre for Public Interest Litigation filed Writ Petition (C) No.16/2011 with the following prayers:

“A. Direct the Government to release all the 5800 conversations of Ms. Niira Radia tapped by the Government agencies into the public domain,

B. Frame guidelines that protect ‘public whistle-blowers’ who make public disclosures that effectuate the citizens’ ‘right to know’,

C. Pass any other order or direction deemed fit.”

6. Arguments in the writ petitions were heard on several dates. On 6.9.2012, 6.11.2012, 8.1.2013 and 8.2.2013, the learned Additional Solicitor Generals representing the Union of India, CBI and Income Tax Department produced some sealed envelopes and also suggested that a team of CBI officers can be constituted for going through the transcripts of all the tapes and then submit a report to the Court. These orders read as under:

“6.9.2012

At the commencement of further arguments, Shri H.P. Raval, learned Additional Solicitor General representing the Central Bureau of Investigation (for short, 'CBI') and the Directorate of Enforcement handed over sealed envelopes containing the Status Reports prepared by the CBI and the Directorate of Enforcement in the investigation taken up by their respective organizations. The sealed envelopes were opened in the Court. We have perused the substantive portions of the Status Reports. The Court Master is directed to reseal the Reports and return the envelopes to the learned Additional Solicitor General who shall ensure that the same are kept in safe custody. The needful has been done.

Shri Amarjit Singh Chandhiok, learned Additional Solicitor General appearing for the Union of India also handed over folder containing five pages which, according to him, is the summary of the investigation conducted by the Income Tax Investigation. Shri Chandhiok also handed over two Volumes, one of which contains investigation report in Nira Radia Group of Cases and other contains Appraisal Report of Search and Seizure in the case of R.S. Bansal and Associates. Shri Chandhiok shall ensure that the first report is kept in a sealed cover and in safe custody.

Keeping in view the prayer made in Writ Petition No. 16 of 2011 titled Centre for Public Interest Litigation (CPIL) v. Union of India, we direct the Director General, Income Tax (Investigation) who was authorised to undertake surveillance on the telephone lines and mobiles of Ms. Nira Radia to constitute a team of officers including those who were directly involved in the surveillance to get the conversation transcribed and submit complete compilation of conversation in the Court within a period of two months.

For further arguments, the cases be listed on 06.11.2012.

6.11.2012

Shri Chandhiok, learned Additional Solicitor General has handed over ten sealed envelopes containing transcriptions of recording of 52.75 hours. An application has also been filed on behalf of the Union of India for extension of

time specified in Court's order dated 06.09.2012 for four months. In our view, there is no justification to entertain the prayer as it has been made. However, we allow two months further time to the respondents to positively comply with the direction contained in order dated 06.09.2012 for transcription of the tapes/conversation recorded in any other electronic instruments. List the case for directions on 08.01.2013.

08.01.2013

Shri Chandhiok, learned Additional Solicitor General for Union of India handed over 38 sealed envelopes (D1 to D38) containing the transcript of all the tapes. Shri Chandhiok also handed over one more envelope since on the last occasion only one set of the investigation report was given.

Shri Prashant Bhushan, learned counsel representing the petitioner in the connected matter and respondent in Writ Petition No. 398 of 2010 submitted that the Court may appoint a team of independent persons to go through the contents of the transcript and submit a report to this Court.

Shri Mukul Rohatgi, learned senior counsel appearing for the petitioner in Writ Petition No. 398 of 2010 opposed the submission of Shri Prashant Bhushan.

Shri H.P. Raval, learned Additional Solicitor General representing the CBI volunteered to say that a team of CBI officers can be constituted for going through the transcript of all the tapes and then submit a report to the Court.

Having considered the respective submissions, we deem it proper to adjourn the case on 22.01.2013.

To be taken up at 3.45 p.m.

08.02.2013

Arguments in this case were initially heard on 22.08.2012.

Further arguments were heard on various dates.

On 6.11.2012, Shri A.S. Chandhiok, learned Additional Solicitor General handed over ten sealed envelopes containing transcript of recording of 52.75 hours of the conversation which Ms. Nira Radia had with various individuals.

On 08.01.2013, Shri Chandhiok handed over another two sets of thirty eight sealed envelopes (D1 to D38) containing the transcript of the remaining conversation.

We have gone through some of the transcripts and would have passed appropriate order for their scrutiny by a team of officers, but as the learned Additional Solicitor General is not available and a request has been made for an adjournment, we deem it proper to postpone recording of the order.

Shri Mukul Gupta, learned senior counsel representing the Income Tax Department has handed over two sealed sets of one more envelope marked D-39. The Court Master is directed to keep the envelopes along with the other envelopes. The needful has been done.

Put up on 13.02.2013 at 3.30 p.m.”

7. On 21.2.2013, the Court constituted a team comprising the officers of Indian Revenue Service and CBI for scrutinizing the transcripts of the tapes made available by the learned Additional Solicitor General. That order reads as under:

“On 13.02.2013, Shri Hiren P. Raval, learned Additional Solicitor General had handed over two sealed envelopes containing the names of the officers of the

Central Bureau of Investigation (CBI), the Income Tax Department and the Enforcement Directorate, who could be entrusted with the task of scrutinizing the transcripts of the Nira Radia tapes.

We have opened the sealed envelopes and perused the papers contained therein. A team comprising the following is constituted for preparing a report after carefully scrutinizing the transcripts of the tapes made available by the learned Additional Solicitor General Shri A.S.Chandhok.

A. Income Tax Department Shri Arup Kumar Singh (IRS-1994 batch), during whose tenure major part of the transcripts of Nira Radia tapes were prepared.

B. Central Bureau of 1. S/Shri Sunil Dutt Investigation (Inspector)

2. Pramod Kumar (Inspector)

3. Mukesh Kumar (Inspector)

4. Pawan Kumar (Inspector) and

5. Alok Kumar Singh (Sub-Inspector)”

The evaluation of the transcripts shall be supervised by Shri R.A.Yadav, Deputy Superintendent of Police and Shri Rajiv Dwivedi, Assistant Superintendent of Police - (both CBI). The aforesaid team shall report to Shri Vivek Priyadarshi, Superintendent of Police, CBI (ACB), New Delhi and the overall supervision shall be of Shri Santosh Rastogi, DIG and Head of Branch - CBI, ACB, New Delhi.

The team shall, after going through the transcript submit a report whether the conversation gives an indication of commission of criminal offence by the

conversationist. A report based on the analysis to be done by the team shall be submitted in this Court within four months from today. The petitions be listed for arguments on 09.04.2013 at 2.00 P.M.

The Court Masters are directed to return the envelopes made available by Shri Amarjit Singh Chandhiok, learned Additional Solicitor General. The needful has been done.”

8. The report prepared by the aforesaid team was filed in the Registry on 15.7.2013. On the next date of hearing, i.e., 31.7.2013, the report was perused by the Court and the suggestion made by Shri Paras Kuhad, learned Additional Solicitor General representing CBI that the CBI can make inquiry into some of the matters mentioned in the report was noted.

9. The second report based on the scrutiny of intercepted call recordings of Ms. Nira Radia by Income Tax Authorities was also placed before the Court and the same was perused. On 27.8.2013, learned Additional Solicitor General representing the Union of India made a request for in-camera hearing. His request was granted and on 29.8.2013, in-camera proceedings were held. After going through the papers produced by learned Additional Solicitor Generals on that date, the Court made the following order:

“In furtherance of the order passed on 27. 08.2013, In-Camera proceedings were held today.

Shri L.Nageswara Rao, learned Additional Solicitor General appearing for the Union of India and Shri Paras Kuhad, learned Additional Solicitor General appearing for the Central Bureau of Investigation assisted the Court in going through the two Investigations Report, one of which was prepared by the team constituted by the Ministry of Finance, Department of Revenue and other was prepared by Inter-Ministerial Committee. We were also shown some other documents. After going through the papers, it was felt that the remaining tapes relating to Nira Radia got prepared by the Income Tax Department be heard by a joint team of officers of the Central Bureau of Investigation and Income Tax

Department and a brief report be submitted to the Court in a sealed cover. If necessary, the team may seek assistance from any other government agency.

Put up on 01.10.2013.”

10. Further arguments were heard in the context of the two reports. Shri L.N. Rao, learned Additional Solicitor General representing the Income Tax Department and Shri Paras Kuhad, learned Additional Solicitor General representing CBI suggested that the Court may pass necessary orders for further investigation into some of the issues highlighted in the two reports and some may be allowed to be investigated by the State police or the Vigilance Branch of the concerned Department or SEBI. They further submitted that in respect of Issue No.8, the Court may take appropriate view and pass necessary order. Shri Prashant Bhushan, learned counsel representing the petitioner in Writ Petition No.16/2011 submitted that the Court should order registration of First Information Reports by CBI and issue directions for comprehensive investigation.

11. We have considered the respective submissions. In paragraph 8 of the first report, the team constituted by the Court has made the following observations:

“That analysis of the calls of Ms Nira Radia revealed that during the period of interception i.e. year 2008-2009, she had been talking over her phone to her employees, clients, media persons and other important persons in the field of politics, business, bureaucracy and journalism, etc. During investigation of RC DAI 2009 A 0045 (2G Spectrum Case) and the scrutiny of the transcripts, it emerged that Ms. Nira Radia, through her companies, provided consultancy to Tata Group of companies, M/s Unitech Ltd., and M/s Reliance Industries Ltd. (Mukesh Dhirubhai Ambani Group). During her conversations, she discussed several important issues including judicial judgments, policy matters of Government of India, insider information of important issues related to Department of Telecommunications (DOT), condition of civil aviation in India, allocation of coal & iron ore mines and issues related to gas and petroleum sector etc. During her conversations, she discussed these issues at length with media persons, politicians, businessmen, corporate persons and bureaucrats etc.”

12. The team then categorised the suspected calls in 17 issues which hint at some criminality/irregularity etc. These issues are:

“Issue No. 1- Supply of low floor buses by M/s Tata Motors to Government of Tamil Nadu under JNNURM scheme of Government of India.

Issue No.2- Appointment of Mr. Pradip Baijal, ex chief of TRAI as Chairman of Pipeline Advisory Committee.

Issue No.3- Allotment of Coal blocks to Sasan Ultra Mega Power Project (UMPP) run by Anil Ambani (ADAG) Group.

Issue No.4- Allotment of Iron ore mines at Ankua, Singhbhum District of Jharkhand to M/s Tata Steel.

Issue No.5- Regarding favours shown by Mr. V.K. Sibal, the then Director General of Directorate General of Hydrocarbon to M/s RIL and quid-pro-quo received.

Issue No.6- Fudging in the subscribers base / record by Reliance Communication, ADAG Company and submission of the same to Bombay Stock Exchange (BSE) and TRAI to save the money.

Issue No.7- Working of touts and middlemen and kickbacks in aviation sector.

Issue No.8- Matters relating to corruption/malpractice in Judiciary/Judges/Tribunals etc.

Issue No.9- Allotment of Iron ore mine to Reliance ADAG group without having any Steel Plant.

Issue No.10- Allotment of additional spectrum to M/s Reliance Communication (ADAG Company).

Issue No.11- Shri Dayanidhi Maran gave money to Shri Stalin's mother for a Cabinet berth.

Issue No.12- Sending of nephew of Mr Arcot Veeraswamy to London by TCS (at the behest of Mr A. Raja, Minister of Telecommunications).

Issue No. 13- Various issues pertaining to Allotment of 2G spectrum to Unitech, offloading of shares by them to Telenor etc.

Issue No.-14- Market manipulation and hammering of stocks of Unitech.

Issue No. 15- Sale of Green House Company by Mr. A. Raja to M/s Dynamic group of Mr. Shahid Balwa.

Issue No. 16- Regarding possession/ access to confidential ministry papers by one Journalist Mr Jaiswal.

Issue No.17-Scrutiny of SMSs found in the relevant hard discs.”

13. The team has then suggested that CBI may make inquiry on the subjects mentioned in issue Nos.2, 3, 5, and 6 and the subjects mentioned in issue Nos.1, 4, 7 and 14 may be inquired by Police Officers of the concerned State or other agencies. In our opinion, the first part of the suggestion made by the team merits acceptance but the second part does not commend our approval. The subjects mentioned in the eight issues are prima facie indicative of deep rooted malaise in the system of which advantage has been taken by private enterprises in collaboration/connivance with the Government officers and others. The conversations between Ms. Nira Radia and her associates with various persons

suggests that unscrupulous elements have used corrupt means to secure favours from the Government officers, who appear to have acted for extraneous considerations. Therefore, we are convinced that instead of asking the State Police or other agencies to make inquiries on the subjects mentioned in issue Nos.1, 4, 7 and 14, it would be appropriate to direct an inquiry by CBI in respect of these issues as well. Accordingly, we direct CBI to make inquiry in terms of Chapter 9 of CBI Manual in respect of the subjects mentioned in issue Nos.1, 2, 3, 4, 5, 6, 7 and 14 and positively submit a report within a period of two months from today.

14. As regards issue No.9, we direct that the matter may be referred to the Chief Vigilance Officer, Ministry of Mines, Government of India for taking appropriate action.

15. A report based on detailed conversations which are subject matter of issue No.8 be referred to the Chief Justice of India for consideration and appropriate action.

16. In the second report, the team has categorised suspected calls under the following 6 issues:

“Issue No. 1- Alleged criminal misconduct by public servant in respect of survey/raid conducted by Income Tax department. Issue No.2- Payment of illegal gratification to Income Tax officials to get work done.

Issue No.3-Chartered Accountant working as tout of Income Tax officer.

Issue No.4- Payment of illegal gratification/favours extended to Public Servants.

Issue No.5- Conversations regarding allocation of spectrum. Issue No.6- Miscellaneous issues.”

17. Having carefully considered the second report, we direct CBI to make inquiries in terms of Chapter 9 of CBI Manual on the subjects mentioned in all the 6 issues and submit a report to this Court within a period of two months.

18. During the course of argument, it was suggested that the remaining tapes should be scrutinized by the same team and a comprehensive report be submitted to the Court. Both the learned Additional Solicitor Generals submitted that a bigger team may be constituted because a very large number of tapes are required to be scrutinized. We then asked the learned Additional Solicitor General representing the Union of India to give a list of the officials who can assist the existing team. Accordingly, the learned Additional Solicitor General furnished a list of the following 10 Income Tax Inspectors, 5 of whom were part of the team constituted earlier, for undertaking scrutiny of the remaining tapes:

1. Names of Income Tax Inspectors already working in existing CBI team:

i. Shri Kanuj Sehra

ii. Shri Saurabh Mehta

iii. Shri L. Santa Kumar Singh

iv. Shri Gaurav Bhushan

v. Shri Raj Kumar

2. Names of additional five Inspectors of Income Tax to be included in CBI team:

i. Shri Rajneesh Kumar

ii. Shri Vikash Kumar Mahto

iii. Shri Roshan Kumar Gupta

iv. Suman Kumar Jha

v. Shri Pardeep Kumar Dahiya

19. Having considered the list furnished by the learned Additional Solicitor General, we direct that the team already constituted by the Court shall be assisted by 5 officers mentioned in paragraph 2 of the list to facilitate preparation of comprehensive report keeping in view the directions given by the Court from time to time. The evaluation of the transcripts shall be supervised by Shri R.A.Yadav, Deputy Superintendent of Police and Shri Rajiv Dwivedi, Assistant Superintendent of Police - (both CBI). The aforesaid team shall report to Shri Vivek Priyadarshi, Superintendent of Police, CBI (ACB), New Delhi and the overall supervision shall be of Shri Santosh Rastogi, DIG and Head of Branch -CBI, ACB, New Delhi.

20. For consideration of the reports of CBI, the case be listed on 16.12.2013.