

Date of judgment: 21.04.2009

+ W.P.(C) 8348/2009, C.M. No. 5205/2009 (Exemption)

PREM CHAND GUPTA

..... Petitioner

Through : Mr. K. Venkatraman, Advocate.

versus

UOI & ORS.

..... Respondents

Through : Mr. Raghav Bansal, proxy for Mr. Subhashh Bansal, Sr. Standing Counsel, I.T, for Resp. Nos. 4 and 5.

Mr. Vikas Pahwa, Standing Counsel for CBI with Mr. Biswajit Kumar Patra, Advocates.

CORAM:**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

S.RAVINDRA BHAT, J. (OPEN COURT)

1. The writ petitioner seeks directions to the respondents, particularly, the Central Bureau of Investigation (CBI), to take action, after considering the relevant files prepared in 1992, based on his complaints dated 13.05.1992 and 28.07.1992 regarding raids planned against “Mahavir Metals”, (a family concern of certain individuals, whom he terms as “Jain Brothers).” Apparently, the petitioner had worked with the said “Jain Brothers” as their Accountant; he alleges that they were indulging in illegal activities and were involved in smuggling and transacting in precious metals without disclosing them in their books of accounts. It is submitted

that the petitioner's complaints motivated the authorities to conduct a search and also plan a raid, which was later abandoned.

2. Learned counsel for the petitioner relies upon the order made by the Secretary, Legal Services Authority, on 09.02.2009, pursuant to directions of the Central Information Commission (CIC) regarding the question why legal aid was not given to him.

3. It is submitted that this Court, in exercise of its judicial review powers is clothed with sufficient jurisdiction to direct the respondent authorities as well as the CBI to look into the files and ascertain why the raid was not conducted; and in the event it finds any irregularity or illegality, appropriate directions to remedy the situation would be warranted.

4. The writ petitioner had approached this Court earlier on two occasions, once in W.P. 306/1995. In that proceeding too, similar directions were sought for. It is contended that in addition, since the petitioner had informed the authorities, he was entitled to reward according to the policies and schemes. Learned Single Judge, after considering the pleadings and submissions of the parties, rejected the said writ petition, stating as follows:

“After hearing the petitioner and the counsel for the Income Tax Department, I am of the view that allegations leveled against officials of the Department have not been substantiated rather every allegation has been explained by the petitioner in its counter affidavit. Neither Mr. P.S. Tomar nor Mr. B.P. Mishra or for that matter Mr. J.R. Kajla had anything to do with the stoppage of the search. As explained by the respondent, the search had to be abandoned on the date fixed because of the disclosure made by the petitioner himself about the survey to be conducted to number of departments of the Government of India. He even went to the extent of informing Mr. Anand Jain, whose premises was to be searched that Department was going to survey his premises. Therefore, Mr. Rajinders, counsel for the respondent rightly contends that such a search for which petitioner had given lot of publicity would have lost its significance particularly when Department knew that the intimation about the same had already been conveyed by the petitioner to the party concerned. After the informer had leaked the information, to my mind, the purpose of search lost its significance. The Department, therefore, was justified in abandoning the same. Moreover, after the survey and search when Mr. Jain Brothers surrendered the

amount of Rs. 4 lakhs, petitioner has already been paid the reward amount of Rs.8,000/- on 3rd July, 1995. Mr. Rajindera also stated that another sum of Rs.2,000/- has been paid to the petitioner on account. Unless and until assessments are completed and the exact position does not emerge the exact amount cannot be paid to the petitioner. But as an interim measure a sum of Rs.2,000/- has been paid, the balance would be paid, if due, after completion of the assessment. To my mind, the respondent having complied with provisions of law by taking appropriate action and also conducting the search and survey at the appropriate time there survives nothing in this petition.”

5. The petitioner felt aggrieved and appealed to the Division Bench, which rejected the same, stating as follows, on 16.01.1996 (in LPA 7/1996):

“The petitioner had also complained that action contemplated by the Income Tax Act was started but was given up by the officers. This complaint against the officers was also investigated and nothing substantial was found against the officers. In fact, the proposal for search was taken up by the very officer against whom the petitioner made the complaint. He was, however not the officer who could take a final decision in respect of conducting or cancelling the raid. The learned Judge, therefore, rightly rejected this allegation. In fact, the search had to be postponed because of non availability of police protection. He also pointed out that the petitioner himself was announcing to all and sundry regarding his allegations and the Jain came to know about it. This had also come in the way of a raid. Mr. Anand Jain, on the other hand was complaining against the petitioner that the petitioner was black mailing him and his business associates. A survey was conducted on the business houses on 27.7.1993. Similarly survey was also conducted against M/s M.C. Auto Pvt. Ltd. and various action were taken.

The Learned Single Judge, therefore, came to the conclusion that nothing further was to be done in this matter in view of the action already taken by the Deptt. and stand taken by them. In fact, further proceedings are pending.”

6. The petitioner’s attempt to get further redressal through appeal by the Special Leave was received with a similar fate. SLP 10116/1996 was dismissed by the Supreme Court on 06.05.1996.

7. Apparently, the petitioner again sought to agitate the matter by filing W.P. 615/1998; this time, it was heard by the Division Bench which rejected it, stating as follows:

“We take on record the statement of respondent that the petitioner will be

paid reward at the earlier, when all the conditions laid down in Reward Rules for ascertainment of reward are fulfilled, which in fact was also the direction made by this court while disposing of the writ petition on 20.11.1995 and for that reason we are not inclined to reopen the entire issue afresh.

Learned Counsel for the petitioner tried to raise an issue that nothing has been stated about the assessment year 1991-92 in the additional affidavit.

We are not permitting the petitioner to raise this issue again for the same reason that his was the subject matter of the earlier writ petition, which was disposed of finally and it is not permissible for the petitioner to again agitate the same question in this writ petition. “

8. It was argued by Mr. K. Venkatraman, learned counsel appearing on behalf of Legal Aid submits that the relief the petitioner now seeks is that the CBI should look into the matter, to ascertain whether indeed the raid scheduled in 1992 was called off in a *bona fide* manner for want of police protection and whether the act warranted any further action. Mr. Vikas Pahwa, appearing on advance notice on behalf of CBI, submitted that in view of the recent decisions of the Supreme Court, involving CBI [*Aleque Padamsee & Ors. v. Union of India & Ors.* 2007 (6) SCC 171 & *Sakiri Vasu v. State of Uttar Pradesh & Ors.* 2008 (2) SCC 409], it has been reiterated that Article 226 of the Constitution cannot be a source of power for the Court to direct the CBI to conduct investigations. In case the petitioner is aggrieved, he should approach the Court with an appropriate complaint under Section 200.

9. The above facts would show that the writ petitioner had approached this Court on two separate occasions. He had gone upto the Supreme Court, raising the same grievance that he has, in the present case. The merits of his contentions were gone into elaborately on both the occasions. In fact, the Court had called upon the parties to file pleadings, as is evident from their copies filed in these proceedings. The order of the Single Judge in the previous writ petition and the Division Bench is determinative of the issue as to the correctness or otherwise of the action

by the respondents, calling off the raid. In the circumstances, the petitioner's persistence in insisting that the Court should intervene and direct the CBI, cannot be understood. After seeking recourse to legal remedies and having approached the highest Court of the land, the writ petitioner again filed another proceeding under Article 226 in 1999; the Division Bench declined to go into the matter. These determinations are now conclusive and bind him as well as this Court.

10. Taking cognizance of the matter, issuing any orders would virtually undermine the previous determinations. In the circumstances, the writ petition and the accompanying application are dismissed.

S. RAVINDRA BHAT,J

APRIL 21, 2009
'ajk'