

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 17th February, 2011*
Judgment Delivered on: 25th February, 2011

+ **W.P.(C) 14153/2009**

SURENDRA KUMAR RAI Petitioner
Through: Ms.Rekha Palli, Advocate with
Ms.Punam Singh and Ms.Amrita
Prakash, Advocates

Versus

UOI & ORS. Respondents
Through: Ms.Raman Oberoi, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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?

PRADEEP NANDRAJOG, J.

1. On 04.11.2007, a sting operation was televised on the news channel 'India TV', wherein a jawan in uniform was shown receiving bribe. It was alleged that the jawan was a member of the Central Industrial Security Force (CISF) and that he was taking bribe from a civilian to permit entry into the precincts of the Indian Oil Corporation Refinery at Panipat.

2. It was highlighted in the Sting Operation that the Government of India spends crores of rupees of tax-payers' money to raise a Force charged with the duty to protect important and vital installations belonging to the Government and Public Sector Undertakings and that rather than protect these installations, members of the force were making illegal gains by permitting all and sundry to freely enter the Public Sector Undertakings. It was sought to be highlighted that security of public installations in which millions of rupees were invested by the Government were under threat of terrorists and how easy was it for anybody to breach the security.

3. Indeed, the Sting Operation had shown a dirty underbelly of the security at the refinery in question and was rightly viewed with the seriousness it deserved by the senior officers of CISF who immediately contacted the news channel and obtained a copy thereof for viewing with the intention of identifying who was the jawan receiving bribe to permit illegal entry into the refinery and Assistant Commandant of the CISF Unit in charge of the refinery identified the jawan to be the petitioner.

4. Insp.Ranbir Singh was deputed by the Group Commandant to conduct a preliminary inquiry and he gave a preliminary report indicating that there was sufficient material to initiate disciplinary proceedings against the petitioner, and considering the same the Competent Authority served a charge memorandum dated 12.11.2007 upon the petitioner, listing one article of charge as under:-

Article-1

“That H.C./Driver (U/S) Surendra Kumar Rai of force No. 934350037 CISF unit BPS, Surgani while on duty on 05.05.06 at around 06:00 to 18:00 hours at the point besides a stationed truck No.HR-32 9117 at the Gate No.1 of IOC Panipat, took bribe from an Electronic Media correspondent for entering in an illegal manner inside the Plant Area which was telecasted on the India TV on 04.11.07 at around 23:49 hrs. That by taking bribe for an illegal entry in IOC Plant Area from a Correspondent of an Electronic Media, H.C./Driver Suredra Kumar Rai, Force No. 934350037 has not only did a condemnable deed but being a member of an Armed Force, did a severe misconduct and had tarnished the image of the Force in the eyes of the common people”.

5. Petitioner denied the charge and finding the same to be unsatisfactory, the Disciplinary Authority decided to hold a departmental inquiry and vide order dated 26.11.07 appointed Shri Om Prakash, Deputy Commandant CISF Unit Panipat as the Inquiry Officer. But before he could proceed with the inquiry, vide letter dated 27.12.2007 the Inspector General CISF directed the Inquiry Officer to first conduct further preliminary inquiry, however, none was conducted for the reason it was followed by another letter directing the inquiry officer to proceed with the regular inquiry proceedings. Thus, the Inquiry Officer served a notice upon the petitioner requiring him to attend the inquiry proceedings on 6.2.2008.

6. The petitioner alleged bias against the Inquiry Officer by claiming that request by the petitioner for being supplied certain documents was unjustifiably turned down by the Inquiry Officer and thus he filed an application before the Competent Authority praying that the Inquiry Officer be changed, which was rejected vide order dated 11.2.2008,

against which order the petitioner preferred WP(C) No.1586/2008 in this Court, which was dismissed vide order dated 27.2.2008.

7. In the meanwhile on 6.2.2008, 2 out of the 6 prosecution witnesses were examined at an ex-parte hearing, for which the petitioner claims a wrong committed by the Inquiry Officer, in that, the petitioner claims to have prayed for inquiry proceedings to be deferred till the petition filed by him before the Inspector General CISF for change of Inquiry Officer was decided. But we note that nothing turns on this issue for the reason the two witnesses have only deposed that they as also the petitioner was on duty at IOC Panipat on 5.5.2006 and that the place which they could see in the video recording pertaining to a jawan receiving money from somebody was Gate No.1 where the petitioner was deputed for the reason it is not the case of the petitioner that he was not on duty at Gate No.1 on 5.5.2006. It may be clarified here that a very feeble attempt was made by the petitioner when he cross-examined PW-5 on his not being on duty at Gate No.1 on 5.5.2006, but took the matter not much further in view of, as would be herein after noted, documentary evidence to establish said fact.

8. Woman Ct.Meena Tiwari, PW-1 and ASI/Clerk A.D.Tripathi, PW-3 deposed in sync that on 05.11.2007 they along with HC V.P.Rai were called by the Assistant Commandant to his office and a clipping of a news programme on India T.V. was shown to them. In the clipping they saw the petitioner in his uniform taking money from a civilian while checking a truck bearing

No. HR-32-9117 outside Gate No.1 of IOC Refinery Panipat and putting the money in his pocket. On being asked by the Inquiry Officer to explain as to why it appeared to them that the petitioner was taking bribe from the civilian, they replied that the manner in which the petitioner took money from the civilian and went behind the parked truck hiding him from others, clearly indicated that he had taken bribe from the civilian. Both deposed that they recognised the petitioner as they were posted at IOC Panipat along with him. Additionally PW-3 deposed that the petitioner often got posted at the gate of IOC Panipat for checking duty.

9. Relevant would it be to note that though cited as PW-2, HC V.P.Rai was not examined during inquiry.

10. It may be noted that nothing turns on the testimony of PW-1 and PW-3 as what they deposed was simply their opinion with reference to the contents of the video clipping. They were not witnesses to the incident.

11. Asst.Comdt.A.P.Singh, PW-4 deposed that he was attached to the CISF Unit IOC Panipat and has seen the news clipping recorded in the CD. He deposed in sync with PW-1 and PW-3 in regards to the content of the CD.

12. Relevant would it be to note that testimony of PW-4 was also recorded ex-parte as the petitioner had failed to appear before the inquiry officer at the time of recording PW-4's testimony i.e. on 26.02.2008. The learned counsel for the petitioner urged that the petitioner fell sick on his way to Panipat and was hospitalised from 23.02.2008 to 26.02.2008 and that although he was discharged on 26.02.2008, he had

been advised complete bed rest for 2 more days on account of which he could not attend the inquiry proceedings.

13. Insp.Ranvir Singh, PW-5 deposed that he had conducted the preliminary inquiry on 5.11.2007 and that he had watched the contents of the CD wherein he saw a CISF Head Constable take something from a person in civil dress near a tanker and put that thing in his pocket. That after watching the entire clip it can be inferred that the Head Constable, while in uniform, had taken money/bribe from the civilian. That he enquired from several members of the force regarding the place of the incident and it was revealed that the incident recorded in the CD took place outside the main gate of IOC Panipat. Thereafter he had perused the duty register, Ex.'1', where it was recorded that petitioner was on duty at main gate IOC Panipat on 5.05.2006 from 06:00 hours to 18:00 hours. In his cross-examination he admitted that the preliminary inquiry conducted by him was based on the contents of the CD and that he had not enquired from any media person regarding the delay in televising the sting operation. Relevant would it be to note that on being questioned as to how he had ascertained the authenticity of the contents of the CD he replied that *'On viewing the circumstances/ facts shown in the CD, it is evidence that the CD is genuine'*.

14. Relevant would it be to note that since the petitioner was a Constable Driver, and his duties would normally be expected to drive vehicles, the petitioner cross-examined Insp.Ranvir Singh on the subject and elicited the response that in case of requirement, any member of the force could be assigned any

duty. It may also be noted that the petitioner did not cross-examine the witness with respect to the contents of the register Ex.1 and his testimony that the same contained an entry of petitioner being on duty at the main gate of IOC Panipat on 5.5.2006 from 6:00 hours to 18:00 hours.

15. Sh.Kulwant Sharma PW-6 deposed that he had conducted the sting operation on 05.05.2006 and that the petitioner had asked him for ₹150/- as bribe to be allowed to enter inside NFL and IOC Refinery at Panipat which he statedly had paid as shown in the video. That he had first tried to sell the video to Star News Channel but since they did not telecast the video for a long time, he sold the video to India T.V. which is why the telecast of the sting operation got delayed. He also admitted that he was not a reporter with India T.V.. In his cross-examination he stated that the sting operation was shot from a distance with a camera kept in a car with tinted glasses, thus the conversation could not be recorded. That since the telecast was delayed, the time and date of the video was not shown in the clipping. He further stated that he had informed the PRO, IOC Sh.Noorana that the IOC Refinery was not safe and that he was assured by the PRO that the Assistant Commandant is informed and appropriate actions will be taken after an inquiry.

16. In view of the evidence led at the departmental inquiry, the Inquiry Officer submitted a report dated 31.03.2008 holding the charge proved/established against the petitioner. Supplying the same to the petitioner for his reply and receiving the same, the Disciplinary Authority imposed the penalty of dismissal from service upon the petitioner vide order dated

8.5.2008 against which appeal filed by the petitioner was rejected vide order dated 16.2.2009 and further revision filed vide order dated 24.3.2009, further petition filed under Rule 56 of the CISF Revised Rules 2001 was rejected vide order dated 24.9.2009, all of which have been questioned in the instant writ petition.

17. During arguments the following submissions were urged:-

(i) That the fresh preliminary inquiry directed to be conducted vide letter dated 27.12.2007 was conducted by the same officer who had conducted the initial preliminary inquiry and thus there would be bias in the mind of the officer concerned, who would be inclined to uphold his preliminary findings.

(ii) That the entire case against the petitioner is based on a sting operation recorded on a CD and telecasted by a news channel. It was urged that nothing was brought on record to prove the authenticity of the video recording; neither was the original CD containing the original recording of the sting operation produced nor was the person recording the same examined.

(iii) That the identity of the person examined as Kulwant Singh, the person who had conducted the sting operation, is also doubtful and not properly established. It was urged that Kulwant Singh had claimed that he was a correspondent with Punjab Kesri and then became a reporter with India TV but in the CD he is projected as an alert viewer.

(iv) That the video recorded has been misrepresented. It was urged that in the video the petitioner was exchanging some papers with the civilian and not money. It was further contended that because of the delay in telecasting the video, the petitioner has forgotten as to what transpired between himself and the civilian on that day and is thus unable to give a proper defence in regard to the exchange of papers.

(v) That no adequate justification was given for the delay in telecasting the video. It was urged that because of this delay the petitioner was prejudicially affected and was unable to give a proper defence.

(vi) That the petitioner was not given adequate opportunity to defend himself as most of the Prosecution witnesses were examined ex-parte and that even on repeated requests by the petitioner they were not recalled.

18. The basis of the first plea is that pursuant to the letter dated 27.12.2007, the officer who conducted the preliminary inquiry i.e. Insp.Ranbir Singh conducted another preliminary inquiry. The conclusions drawn and as noted in the first submission urged, would need deliberation by us, only upon proof that Insp.Ranbir Singh conducted a second preliminary inquiry. We note that Insp.Ranbir Singh never conducted any second preliminary inquiry. As noted in para 5 above immediately after letter dated 27.12.2007 was issued, the Inspector General CISF directed the Inquiry Officer Sh.Om Prakash, Deputy Commandant to proceed ahead with the regular departmental inquiry.

19. The remaining five submissions center around the CD showing the petitioner receiving bribe from Kulwant Singh PW-6.

20. It is true that the original CD shot by PW-6 was never got authenticated and it is true that Kulwant Singh was attempting to make money by selling a CD to whosoever paid him the best price and on said account the telecast of what was shot on 5.5.2006 took place on 4.11.2007, but at the heart of the matter remains the fact that Kulwant Singh PW-6 deposed in no uncertain terms that he had paid ₹150/- to the petitioner as bribe to gain an entry into the IOC Refinery Complex and with respect to which testimony we find that the petitioner did not even dare to challenge the said testimony by cross-examining Kulwant Singh. It is thus not a case of the CD being the only piece of evidence. We have before us the direct percipient evidence of Kulwant Singh.

21. As noted by us herein above nothing turns on the testimony of PW-1 and PW-3 and notwithstanding the testimony of PW-4, whose testimonies were recorded when the petitioner had not appeared, and even excluding their testimonies, we have on record the testimony of PW-5 and the duty register Ex.1 to establish that on 5.5.2006 the petitioner was on duty at the main gate of IOC Refinery Panipat from 6:00 hours to 18:00 hours and the testimony of Kulwant Singh that on 5.5.2006 he paid ₹150/- bribe to the petitioner to gain illegal entry into the refinery complex.

22. As regards the contents of the CD we may note that not even a suggestion was given to Kulwant Singh that he

doctored the same. The suggestion to Kulwant Singh during cross-examination was that it was a set up to fix the petitioner in a case of bribe, to which Kulwant Singh responded that why would he do so as he never knew the petitioner, a response with which we agree.

23. We have perused the CD at length and had carefully created as many as 8 frames of that part of the CD where Kulwant Singh PW-6 is seen interacting with the petitioner. As explained by Kulwant Singh in his testimony, the video camera was in his car which was at some distance and thus there is no audio, but the video shows the petitioner being approached by Kulwant Singh and Kulwant Singh handing over something to the petitioner, who instinctively takes a step behind a truck, to hide himself, simultaneously petitioner's hand is seen entering his pant pocket and after the something in the hand of the petitioner is safely inside the pocket, the hand returns to the normal position and the petitioner takes the step in retreat to return to his original position. All this has happened in the flash of a second, in ordinary parlance to be in a split second. It is apparent to the viewer of the CD that the action is evidence of a person who is receiving something illegal. We say so for the reason the guilt in the mind doing an illegal act compels the body to take a defensive action. If a man receives a bribe next to a truck, the instinctive action would be to take a step and hide oneself behind the truck and after the bribe is safely put inside a pocket, to resume the initial position.

24. Securities being breached and the nation suffering are events which we read with periodic intervals. We need not lament on the plague of corruption eating into the vitals of the economy of this country. The Panipat IOC Refinery has been set up through public funds and we are informed would need more than ₹3,000 crores if required to be set up today. Surely, the security of the refinery has to be maintained with pristine integrity and any dilution thereof has to be viewed seriously.

25. With reference to the testimony of PW-6 and that of PW-5, who were examined in the presence of the petitioner and were cross-examined by the petitioner. Ignoring all other evidence, we hold that the evidence of the said two witnesses is sufficient to conclude against the Guilt of the petitioner.

26. We may note that though an averment has been made in the writ petition that the inquiry officer was biased evidenced by the fact that he, without any justification, turned down the request of the petitioner for supplying relevant documents, but we find that while urging the grounds in the writ petition, no ground has been urged that the inquiry stands vitiated on said count. That apart, the plea in the writ petition is vague and without material particulars. It has not been pleaded as to what were the documents sought for. Obviously, there are no pleadings that the documents were material for the defence. We may however highlight that in the representation made to the Disciplinary Authority, a brief reference has been made to the documents production whereof was sought. However, relevance thereof has not been brought out by any pleadings

in the writ petition and there are no pleadings of any prejudice being caused on said count.

27. Accordingly, we dismiss the writ petition but refrain from imposing costs.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

FEBRUARY 25, 2011
dk