

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

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Date of decision: 17th December, 2015

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W.P.(C) No.6414/2013

MANOHAR LAL SHARMA

..... Petitioner

Through: Petitioner-in-person.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Jasmeet Singh, CGSC with Mr. Pankaj Bansal, Assistant Director, Home Ministry.
Mr. Pranav Sachdeva and Mr. Syed Musaib, Advs. for AAP.
Mr. Anshuman Sinha and Mr. Vijay Kumar Pandey, Advs. for R-5.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The petition, filed as a Public Interest Litigation (PIL), seeks a mandamus to the respondent No.1 Union of India (UOI) (Ministry of Home Affairs) to register a criminal case against the respondents No.2 to 5 viz. Sh. Shanti Bhushan, Sh. Prashant Bhushan, Sh. Arvind Kejriwal and Sh. Manish Sisodia under Foreign Contribution (Regulation) Act, 2010 (FCRA) and to conduct day-to-day trial proceedings within supervision of this Court. Ancillary

reliefs of seizure of accounts and funds secured by the respondents No.2 to 5 in the name of Aam Aadmi Party (AAP) and other societies / entities is also claimed.

2. It is *inter alia* the case in the petition that though the petitioner had made a complaint dated 20th August, 2011 in this regard to the respondent No.1 UOI and upon UOI not taking any action thereon had also earlier filed W.P.(C) No.3412/2012 before this Court but this petition was being filed upon fresh cause of action within the admitted facts having accrued to the petitioner.

3. The petition came up for admission on 11th October, 2013 when the learned Additional Solicitor General (ASG) appearing on advance notice stated that the complaint received from the petitioner had been investigated and a report was submitted to the Court in W.P.(C) No.3412/2012. Accordingly, the matter was adjourned to 23rd October, 2013 with a direction to the learned ASG to produce the said report. On 23rd October, 2013, the counsel for the respondent No.1 UOI stated that the status report filed on 15th January, 2013 in W.P.(C) No.3412/2012 pertained to evaluation done in the year 2012 with respect to the accounts of the Civil Society @ Team Anna and that UOI would look into the allegations in the petition and if need be call for relevant information pertaining the monies received by AAP from donors abroad.

4. The petitioner filed CM No.521/2014 for a direction to the respondent No.6 Ford Foundation to enquire and report about their association with the respondents No.2 to 5. The petitioner also filed an additional affidavit dated 16th November, 2013 making certain other averments as to the collection of donation from private sources by the consortium of respondents No.2 to 5.

5. On 29th January, 2014, the learned ASG appearing for the respondent No.1 UOI stated that certain queries had been made from the respondents pertaining to allegations in the petition and response where to was awaited and the verification would be completed thereafter.

6. Vide order dated 5th February, 2014, on oral application of the petitioner, AAP was impleaded as respondent No.7 and a response called therefrom. A counter affidavit has been filed on behalf of the said respondent No.7 AAP responding to the allegations made in the petition and to which a rejoinder has been filed by the petitioner.

7. By order dated 12th March, 2014 respondent No.1 UOI was directed to file its counter affidavit and has filed an affidavit dated 6th May, 2014 *inter alia* stating i) that it had filed a status report with respect to the allegations made by the petitioner in the earlier writ petition being W.P.(C) No.3412/2012 and after pursuing which status report, vide order dated 24th January, 2014, the said writ

petition was closed observing that the irregularities found were not serious enough to warrant criminal investigation; ii) that a questionnaire had been sent to the Chief Functionary of AAP pertaining to the allegations made in the present petition and to which a response had been received; and, iii) further information had been sought from AAP and the allegations of the petitioner with regard to violation by respondents No.2 to 5 of FCRA were being enquired into.

8. The petitioner has filed CM No.2641/2015 seeking directions to the Central Bureau of Investigation (CBI) / National Investigation Agency (NIA) to investigate against the respondents as well as the officials of Home Ministry who according to the petitioner had filed un-investigated status report in W.P.(C) No.3412/2012.

9. We have heard the petitioner appearing in person, the counsel for the respondent UOI and the counsel for the respondent AAP. The counsel for the respondent UOI during the hearing also handed over the record of the Ministry of Home Affairs pertaining to the matter in a sealed cover and which has also been perused by us.

10. While the petitioner and the counsel for the respondent UOI reiterated their contentions as recorded by us hereinabove, the counsel for the respondent

no.7 AAP vehemently contended that the respondent no.7 AAP is being targeted for such investigation and when it is the case of the respondent no.7 AAP that all other major political parties should be investigated on the same lines and that the respondent no.7 AAP has nothing to hide and functions in a transparent manner. It was also contended that the respondent no.7 AAP has in fact approached to the Supreme Court for investigation into funding of all political parties. The petitioner, in addition contended that the investigation also has to be regarding the violations of Foreign Exchange Regulations Act, 1973 and Foreign Exchange Management Act and that the Central Investigation Agency (CIA) of the United States of America also has to be involved owing to the involvement of the Ford Foundation. He has during the hearing also handed over several news clippings including of International Journals, downloaded from the internet. In fact after the judgment had been reserved also the petitioner mentioned the matter and has handed over an affidavit of one Mr. Neil Terrance Haslam, S/o Mr. Roland Terrance deposing that the respondents in this petition, against whom investigation is sought, have a direct connection with one Mr. Daud Ibrahim residing in Pakistan who has arranged funds for the respondents through USA, Canada. Certain other allegations have also been made which we do not deem it necessary to record here.

11. We have considered the rival contentions.

12. Though undoubtedly the Courts, in exercise of their power of judicial review, are entitled to direct investigation into an offence alleged to have taken place, as reiterated by the Constitution Bench in *State of West Bengal Vs. Committee for Protection of Democratic Rights West Bengal* (2010) 3 SCC 571 and such direction would not amount to infringement of the doctrine of separation of powers but such power should not be exercised just for asking or to satisfy the ego or vindicate the prestige of a party interested in such investigation and only if find such a direction necessary in the facts and circumstances of the case/situation.

13. In our view, the Courts would be justified in issuing such a direction only if were to find *prima facie* an offence to have been committed and the Investigating Agency, for whatsoever reason, unwilling to act lest investigate or if find the investigation though undertaken, to be not a fair one or when find the gravity of the offence *prima facie* found by the Court to be such which requires investigation by a specialized agency, to restore public faith in the process of law.

14. In the facts of the present case we do not find either of the said requirements to have been met. Not only has the State/State Agency not refused

investigation or a willingness to look into the allegations made in the petition against the respondents but from a perusal of the records produced before us we find the State to have, in the context of each and every averment made in the present case, launched an inquiry/investigation in accordance with law. The petitioner has also not been able to make out a case of the likelihood of the investigation against the respondents being not fair and proper, owing to political factors or owing to the investigative agencies being under the administrative control of the respondents. In fact, this Court had closed the earlier writ petition filed by the petitioner finding no *prima facie* merit in the allegations of the petitioner to call for an order by the Court in exercise of its power of judicial review, to the investigative agencies to investigate.

15. Supreme Court, in ***Secretary, Minor Irrigation & Rural Engineering Services, U.P. Vs. Sahngoo Ram Arya*** (2002) 5 SCC 521, set aside the judgment of the High Court directing the Central Bureau of Investigation (CBI) to hold an inquiry into the allegations made against the Minister. It was reiterated that direction for investigation can be given only if an offence is *prima facie* found to have been committed or a person's involvement is *prima facie* established but a direction to investigate whether any person has committed an offence or not, cannot be legally given; such a direction would be

contrary to the concept and philosophy of "LIFE" and "LIBERTY" guaranteed under Article 21 of the Constitution. Finding that the High Court had issued the direction without coming to a definite conclusion that there is a *prima facie* case established to direct an inquiry and that the High Court had proceeded on the basis of 'ifs' and 'buts', the said direction was set aside.

16. As far back as in ***S.N. Sharma Vs. Bipen Kumar Tiwari*** (1970) 1 SCC 653, while dealing with powers of Magistrate under Code of Criminal Procedure, it was held that unless an extraordinary case of gross abuse of power is made out by those in charge of investigation, the Court should be quite loathe to interfere with the investigation, a field of activity reserved for the Police and the executive.

17. Thus, only if a case of *mala fide* exercise of power by a police officer is made out, would the Court interfere.

18. Supreme Court again in ***Babubhai Vs. State of Gujarat*** (2010) 12 SCC 254 reiterated that only in exceptional circumstances and in order to prevent miscarriage of criminal justice the Court would interfere in investigation. Only when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation that the Court would step in and

exercise its extraordinary power. The said principle has been recently reiterated in *Mithilesh Kumar Singh Vs. State of Rajasthan* (2015) 9 SCC 795.

19. In the present case, we do not find any reason as to why the investigative agencies to whom the petitioner has already complained would not look into or are not looking into the allegations or would not discover the truth.

20. We therefore do not find any case or the need for any direction to be issued by the Court and dismiss this petition with the clarification that neither should the dismissal of this petition be considered as this Court having expressed any view on the merits of the allegations of the petitioner nor should any observation herein be read as our having found any merit therein.

No cost.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

DECEMBER 17th, 2015
'gsr'/pp..