

HIGH COURT OF CHHATTISGARH, BILASPUR

WPIL No. 49 of 2013

1. Ajay Kumar Bisen S/o Shri Kunwar Lal Bisen, Aged About 32 Years R/o Ward No. 10, Stationpara, Post and Thana Rajnandgaon, District Rajnandgaon, Chhattisgarh.
2. Kishore Samrite S/o Shri Nanaji Samrite, Aged About 45 Years R/o Village Lanji, Post and Thana Lanji, Tehsil Lanji, District Balaghat, Madhya Pradesh.

---- Petitioners

Versus

1. State Of Chhattisgarh Through The Chief Secretary, Govt. Of Chhattisgarh Mantralaya, Mahanadi Bhawan, Mandir Hasaud, Naya Raipur, Dist Raipur, Chhattisgarh.
2. The Secretary, Public Works Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, Mandir Hasaud, Dist Raipur, Chhattisgarh.
3. The Secretary, General Administration Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, Mandir Hasaud, Dist Raipur, Chhattisgarh.
4. Chhattisgarh Public Service Commission, Through Its Secretary, Shankar Nagar Road, Raipur, Dist Raipur, Chhattisgarh.
5. Shri P.K.Janwade, Engineer-In-Chief, Public Works Department, R/o C/56, Dr. Bajaj Colony, Sector 2, New Rajendra Nagar, Behind Jain Mandir, Post & Thana Rajendra Nagar, Raipur, Dist Raipur, Chhattisgarh.
6. Central Bureau Of Investigation Through Its Director, Plot No. 5-B, 6th Floor, CGO Complex, Lodhi Road, New Delhi 110003

---- Respondents

For Petitioners:	Shri Amrito Das, Advocate
For Respondent No. 1 to 3:	Shri J.K. Gilda, AG with Shri A.S. Kachhwaha Additional AG
For Respondent No.4:	Shri Soumya Rai, Advocate
For Respondent No.5:	Shri Anoop Majumdar, Advocate
For Respondent No.6:	None

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja
C A V Order

Per Pritinker Diwaker, J

19/02/2016

With the consent of the parties, the petition is heard and disposed of finally.

Petitioner No.2 – an Ex MLA from Lanji constituency of District Balaghat (M.P.) and the petitioner No.1 as well, both claiming themselves to be the social workers, have filed this petition styling it as PIL praying for issuing a direction to respondent No.1 (State of Chhattisgarh) to conduct a detailed inquiry into the allegation of corruption made against respondent No.5 namely P.K. Janwade, Engineer-in-Chief, Public Works Department, State of Chhattisgarh. They have also prayed for issuance of a direction for investigation of the matter by the CBI into the corrupt practices of respondent No.5. According to the petitioners, respondent No.5 had favoured certain persons while granting contract to them. The main allegation against him is that on 20.1.2009 he had visited Maldives and spent a huge sum of Rs. 27 lakhs from the public exchequer. The complaint (Annexure P-2) also states that respondent No.5 made the said payment in dollar and thereby has violated the provisions of Income Tax Act as also the Foreign Exchange Management Act (for short “FEMA”). When the complaint was made against him, instead of imposing punishment on him he has been promoted as Engineer-in-Chief. According to the petitioners, respondent No.5 has given different statements in respect of his expenditure and then he has tried to mislead this Court also by making incorrect statement.

2. Counsel for the petitioners submits that pursuant to the complaint (Annexure P-2) made to the CBI, it had written a letter (Annexure P-3) to the Chief Secretary of the State stating therein that if the State of Chhattisgarh makes any recommendation for investigation of the case by the CBI then only some action can be taken by it. He submits that here is a case where respondent No.5 is being protected by the State and its authorities and despite a clear letter of the CBI it is not handing over the matter to it, and therefore, a direction may be issued by this Court to hand over the matter to the CBI. According to the counsel for the petitioners, in the first return filed by the State Government dated 9.1.2014 it has been stated that on a complaint made against respondent No.5 to the State Economic Offence Wing (for short “EOW”), thorough investigation has already been made but it has not filed any charge-sheet against him. Counsel for the petitioner submits that on the one hand a submission has been made by the State Government that nothing has been found against respondent No.5 but on the other hand taking a somersault in the second return dated 25.3.2014 filed in the form of submission, it has been stated by the

State Government that the inquiry before EOW is still going on. Referring to the letter dated 24.3.2014 (document **marked as "A"**) supported by the affidavit sworn on 25.3.2014 it has been argued that even the EOW is trying to protect respondent No.5. He further submits that in another statement made by the State Government before this Court on 13.7.2015 it has been stated that the matter is still pending for enquiry before the Lok Ayog but because of pendency of this petition, the Lok Ayog has kept its proceedings in abeyance, which also shows that the Government is protecting respondent No.5. Counsel for the petitioners further submits that EOW has already rejected the complaint made by one contractor vide document **marked as "B"** and thus collective efforts are being made to protect the said officer. Placing reliance on the decision of Apex Court in the matter of **Nirmal Singh Kahlon v. State of Punjab and others and J.P. Singla and others v. State of Punjab and others** reported in **(2009) 1 SCC 441** it has been argued by the counsel for the petitioners that present is a suitable case where a direction can be given for CBI inquiry.

3. Opposing the submissions made by the counsel for the petitioners, it has been argued by learned Advocate General that one contractor had made a complaint against respondent No.5 and though despite issuance of notice he failed to appear before EOW yet it has conducted an inquiry against him but not found anything against him. Referring to the first report of the EOW dated 9.7.2015 he submits that for violation of any condition of FEMA, EOW is not the competent authority to look into the same and it is the Enforcement Directorate which is competent for the said purpose. Learned Advocate General further argued that the petitioners have not made any complaint to Lok Ayog, however, a complaint has been made by one Rakesh Choubey which is being inquired into by the Lok Ayog but because of pendency of this petition, the proceedings before the Lok Ayog have been stayed. He submits that the State government has no objection against if the Lok Ayog proceeds with the inquiry against respondent No.5 and submits its report. According to the Advocate General, how much amount has been spent by respondent No.5 during his Maldives visit and for how many persons he had made the payment, is all the subject matter of fact finding inquiry which cannot be done in the writ petition styled as PIL filed by the petitioners. Placing reliance on the decision of Apex Court in the matter of **State of West Bengal and others v. Committee for Protection of Democratic Rights, West**

Bengal and others reported in (2010) 3 SCC 571 reported in (2010) 3 SCC 571, learned Advocate General argued that if in such petty matters a direction is issued for CBI inquiry then this Court will be flooded with such litigations because every now and then the people will approach this Court making allegations of corruption against such officers and seek CBI inquiry. He admits that this Court has jurisdiction to pass such orders but it has to be done in rarest of rare cases. Highlighting the past record of the petitioners, learned Advocate General has argued that petitioner No.2 namely Kishore Samrite - resident of State of Madhya Pradesh was saddled with heavy cost by the Supreme Court in a case reported in (2013) 2 SCC 398. He submits that the petitioners are not public spirited persons and this petition has been filed as PIL just to settle the personal score.

4. Counsel for respondent No. 5 has argued that till date the petitioners have not made any complaint before the Lok Ayog and their intention behind filing this petition is just to block the future prospects of respondent No.5. He submits that present is a sponsored litigation at the behest of those persons who are after respondent No.5 and the petitioners have nothing to do with the affairs of the State Government. He submits that respondent No.5 had visited Maldives along with his seven family members and made the payment for for them as well and not for himself alone. According to the counsel for respondent No.5, this petition is not filed in conformity with the High Court Rules. Counsel for respondent No.5 submits that earlier the petitioner No.2 had filed a petition against some Congress leader at Allahabad High Court making allegation regarding his conduct and character but the Allahabad High Court had dismissed the same by making serious observation and imposing an exemplary cost of Rs. 50,00,000/-. He further submits that petitioner No.2 cannot be called a public spirited person as he is not espousing the cause of public at large. He submits that the petitioner No.2 has a criminal background and he has also been convicted in a criminal case. According to him, the only intention of the petitioners behind filing the present petition is to deprive respondent No.5 of holding the topmost post of the department and have also failed to disclose the source from which they have got the information and made allegation against respondent No.5.

5. Heard counsel for the parties and perused the documents available on record.

6. During hearing of the case this Court put a specific question to the counsel for the petitioners whether the petitioners wish to approach the Lok Ayog or any competent authority of the State government making any complaint or seeking an inquiry but he outrightly stated that they are not interested to approach any authority of the State Government or the Lok Ayog as according to them it would be a futile exercise.

7. Admittedly, petitioner No.2 is not the resident of this State nor has he pleaded any connection with the affairs of the Public Works Department. Likewise, petitioner No.1 has also failed to show as to what interest does he have in the Public Works Department or respondent No. 5 herein. Thus both the petitioners have failed to prove their bona fides in filing the present petition.

8. All these questions - whether during his visit to Maldives respondent No.5 spent Rs. 27 lakhs; whether it was for himself or for the entire family; whether said amount has been paid by the contractor; whether there is any violation of FEMA etc. are the subject matter of a fact finding inquiry which admittedly cannot be answered in a PIL like the present one filed by the petitioners. Petitioners have even not substantiated their pleadings as to on what basis such allegations are being made against respondent No. 5. On the contrary, all the allegations made by the petitioners have been seriously denied by respondent No. 5 and even according to the State Government in the inquiry conducted by the EOW nothing has been found against respondent No.5.

9. Petitioners have made the allegation against the State Government that even the proceedings before the Lok Ayog have been stalled by it which shows its favoritism to respondent No.5. However, they have utterly failed to point out even a single instance for substantiating this allegation by due documentation as to how and when any favouritism protecting respondent No.5 was made by the State Government. Lok Ayog is an independent wing of the State Government and merely on the basis of such bald allegation nothing adverse can be presumed by this Court against it. This Court even tried to know the stance of the petitioners whether they are willing to take their grievance before the competent authority of the State government including the Lok Ayog but expressed their adamant attitude in not undertaking any such exercise as according to them it would not

result in utility rather it would end in futility, and are persistent in their demand for handing over the matter to the CBI.

10. Dealing with the matter regarding investigation/inquiry by the CBI in **State of West Bengal and others (supra)** it has been held by the Apex Court as under:

“69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegation against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise, CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory.”

11. Though according to the allegation made by the petitioners respondent No.5 has spent a huge sum during his Maldives visit along with seven other members of his family, but mere allegation is not enough to proceed against any individual unless and until it is established by proper documentation. Since all

these allegations made against respondent No.5 fall within the domain of fact finding inquiry, this Court being within the self imposed limitations cannot allow its process to be abused by the petitioners by indulging in wild and reckless allegations besmirching his character. This Court also finds substance in the submissions of the State counsel as also the counsel for respondent No.5, that if in every case the PIL is accepted, possibility of like-minded people approaching this Court with a request for investigation/inquiry by the CBI even in petty matters cannot be ruled out.

12. In view of our foregoing analysis and premised reasons, we conclude and hold that the writ petition which has been styled as Public Interest Litigation is substratum and tantamount to abuse of process of the Court and waste of court's time and therefore, we unhesitatingly dismiss the same *in limine*. Ordinarily, we would have imposed exemplary cost but we refrain from doing so. We just decry the unwarranted venture of the petitioners.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

