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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on : 12.10.2017

Date of Judgment: 29.01.2018

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W.P. (CRL.) 2865/2017

CBI

..... Petitioner

Through: Mr. Nikhil Goel and Mr. Sanjeev
Bhandari, SPP for CBI.

versus

SHRIKANT JAIN & ORS.

..... Respondents

Through: Mr. P.R. Aggarwal, Advocate
along with Mr. Arun Srivastava and Mr.
Y.R. Sharma, Advocate for R1.
Mr. K.K. Patra, Advocate for R2.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. The Central Bureau of Investigation has invoked the writ jurisdiction of this Court under Article 226/227 of the Constitution of India for quashing of the impugned order dated 26.09.2017 passed by the Court of Learned Special Judge-III, CBI Tis Hazari Courts, Delhi (in short 'Ld. Special Judge') in Sessions Case No.27285/2016 titled as CBI Vs. Shrikant Jain & Anr.

2. By the impugned order, the Ld. Special Judge has imposed a costs of Rs.10,000/- upon the Director of Prosecution, CBI for causing delay in adjudication of the Sessions case by not posting a Senior Public Prosecutor well in advance before the previous Senior Public Prosecutor was relieved.
3. A perusal of the impugned order and the previous proceedings in fact reflects that the learned Special Judge had casted disparaging remarks and imposed costs of Rs.10,000/- upon the Director of Prosecution, CBI for not retaining Sh. B.K. Singh, Senior Public Prosecutor CBI (in short 'Sr. PP') in his Court and on account of his transfer from the Court and posting of a new Public Prosecutor Sh. Tajvinder Singh in place of him.
4. The brief facts of the case are that Sh. B.K. Singh, Sr. PP was posted in the court of Ld. Special Judge. The learned Special Judge has joined there on 15.05.2017. The Ld. Special Judge started hearing the final arguments in an old case titled as "CBI vs. Shrikant Jain & Anr." w.e.f. 29.05.2017. In this case the charges were framed against the accused persons on 15.02.2011 for stealing antiques and attempting to illegally export them out of India. The learned Sr. PP addressed detailed arguments on 29.05.2017, 05.06.2017 and 01.07.2017. He concluded arguments on 05.07.2017. The learned Special Judge heard the arguments of accused persons on 12.06.2017, 13.07.2017, 22.07.2017 and 27.07.2017. Rebuttal arguments were addressed by the learned Sr. PP Sh. B.K. Singh on 01.08.2017. However,

on request of learned counsel for the accused persons, time was granted to them to submit further final arguments on 10.08.2017. In fact final arguments were concluded on 10.08.2017 and still the Ld. Special Judge listed the case for 25.08.2017 for consideration. The order dated 10.08.2017 reads as under:-

“10.08.2017

Present: Sh. B.K. Singh, Ld. Sr. PP for CBI.
A-1 is present on bail along with Ld. Counsel Sh.P.R. Aggarwal.
A-3 is present on bail.

Final arguments concluded.
Put up on 25.08.2017 for consideration.

Sd/-
Special Judge,
CBI-03 (PC Act)
Delhi/10.08.2017”

5. On 25.08.2017 the Ld. Special Judge sought certain clarifications and accordingly arguments were addressed in detail by both the parties. It is observed by learned Special Judge that Sr. PP for CBI wants to file certain case laws in support of its case and adjourned the case for clarifications/filing of the case laws on 11.09.2017.
6. For disposal of this writ petition, it is necessary to note that on 06.09.2017, the Ld. Special Judge through the learned District & Sessions Judge (HQ) had written a letter to Director, CBI in

his endeavour to retain Sh. B.K. Singh, Sr. PP in his Court. The letter reads as under:-

“To
The Director
Central Bureau of Investigation
CGO Complex, 5B Building
Lodhi Road, New Delhi-110003

06.09.2017

(Through : Ld. District & Sessions Judge (HQ) Tis Hazari Courts, Delhi.)

Sub: Kind attention of your good office towards the frequent transfers of Public Prosecutors.

Sir,

With utmost pain and anguish I want to bring to your kind notice about the decision of your subordinate office regarding the abrupt and frequent transfer of Public Prosecutors in Subordinate Courts.

I had joined as Special Judge-III, CBI, Tis Hazari Courts, Delhi on 15.05.2017 i.e. barely three months ago from this date and Senior Public Prosecutor Sh. B.K. Singh attached to the Court of undersigned had joined here only in the month of March, 2017. After joining my duties in the current portfolio, I had instructed the Sr. PP Sh. B.K. Singh to go through all the case files as early as possible in order to expedite the disposal of cases in terms of mandate of Hon'ble Supreme Court and Hon'ble High Court with regard to disposal of more than 10 years old cases.

Though with the aid and assistance provided by Sr. PP and other counsels, one 32 year old case filed by CBI could be disposed off, but fate of other old cases which are around 40 years old (probably the oldest case of India) and 27 years old which were in pipeline for

disposal i.e. in which final arguments were in progress still hang in balance.

This Court is not able to understand as to why Sr. PP who had made himself well abreast of all the files of this Court has been transferred. The new incumbent posted with this Court as replacement, whatsoever competent he may be will definitely take long time for getting himself prepared for arguments as the records of the case is voluminous which would certainly affect disposal.

The frequent transfers of Senior Public Prosecutors from one court to other frustrates the very directions of Hon'ble Supreme Court and Hon'ble High Court to dispose of the old cases and is not in the interest of your esteem institution. What is the fun in detailed investigation being carried on by your officers when there is no officer well versed to apprise the courts about the prosecution case. If some Public Prosecutor prepares himself for the same, your good office just transfer him out to some other posting.

It appears that the officers of concerned agency under your control who are engaged in transfer and posting of Sr. Public Prosecutors is making mockery of system as either they are not being provided with the guidelines for transfer or if they have any, they are adopting whims and caprices. In order to have maximum output from a court with regard to disposal of cases, there should be a minimum and maximum tenure of Sr. PP in a particular court and Sr. PP should be transferred only when the Presiding Officer is transferred so as to expedite the process of disposal.

The undersigned never remains ambitious of getting any particular Public Prosecutor, but the only zeal is that if a particular Public Prosecutor is posted, he should remain posted in the court for a minimum period or if not so till the transfer of Presiding Officer of Court.

The order of Sh. B.K. Singh for his transfer from this court smells some arbitrariness which would have an adverse impact on the disposal of this Court. As already said, the arguments in cases have lifeline of 40 years and 25 years were in progress when the Prosecutor of the Court is transferred.

If possible, please cancel his order of transfer so that this court may execute the mandates of Superior Courts in its true letter & spirit.

Thanking you,

Yours faithfully,

Sd/-
Special Judge, CBI
Tis Hazari Courts, Delhi.”

7. In the light of these aforesaid developments, on 11.09.2017, the Ld. Special Judge has observed in his order that certain clarifications were required from Sr. PP for the CBI who had addressed the final arguments and it was not humanly possible to clarify the matter by the new incumbent i.e. new PP deputed in the Court. He issued a show cause notice to the Director of Prosecution CBI as to why heavy costs should not be imposed upon him as attempts have been made on the part of the CBI to frustrate the execution of the directions of Hon'ble Supreme Court and High Court for disposal of old cases. He further directed to send the copies of the order sheets to the Home Secretary, Government of India and Director of CBI to do the needful and take necessary action.

8. Reply to the notice was filed by the CBI. The learned Special Judge passed the impugned order dated 26.09.2017 running into 10 pages imposing a costs of Rs.10, 000/- on the Director of Prosecution CBI to be paid within a period of three weeks.
9. At the outset, it hardly needs to emphasise that a judicial officer is supposed to discharge his/her duties wholly independently, fearlessly and impartially. A judicial officer belonging to the subordinate judiciary also, like any other judge of the superior judiciary, discharges the same function, namely, dispensation of justice. It is said that dispensation of justice is a divine attribute. Therefore, he/she is to discharge this duty, which is an onerous duty-bestowed upon him/her without any influence, wilfulness, vanity or egotism. Following words of wisdom of Socrates have withstood the test of time as they are eternal:

“Four things belongs to a Judge: to hear courteously;
to answer wisely; to consider soberly; to decide
impartially.”

10. The issue “What are the qualities, which are expected of a judicial officer?” came up for discussion before the **Hon’ble Supreme Court in Delhi Bar Association Vs. Union of India and Ors. (2002) 10 SCC 159**. Referring to this case, the **Hon’ble Supreme Court** in a judgment delivered in the case of **K.H.Siraj v. High Court of Kerala & Ors., AIR 2006 SC 2339**, held as under:

“The qualities which a Judicial Officer would possess are delineated by this Court in Delhi Bar Association v. Union of India and Ors. (supra). A Judicial Officer must, apart from academic knowledge, have the capacity to communicate his thoughts, he must be tactful, he must be diplomatic, he must have a sense of humour, he must have the ability to defuse situations, to control the examination of witnesses and also lengthy irrelevant arguments and the like”

11. In **A.M. Mathur v. Pramod Kumar Gupta (1990) 2 SCC 533** the **Hon’ble Supreme Court** observed that judicial restraint and discipline are necessary to the orderly administration of justice. The duty of restraint and the humility of function has to be the constant theme for a judge, for the said quality in decision-making is as much necessary for the Judges to command respect as to protect the independence of the judiciary. It was observed that intemperate language should be avoided in the judgment and while penning down judgment, control over language should not be forgotten. It was observed:-

“13. Judicial restraint in this regard might better be called judicial respect, that is, respect by the Judiciary. Respect to those who come before the court as well as to other coordinate branches of the State, the executive and the legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the Judge has failed in these qualities, it will be neither good for the Judge nor for the judicial process.”

12. Recently, in *Om Parkash Chautala v. Kanwar Bhan and others (2014) 5 Supreme Court Cases 417* the Hon'ble Supreme Court has held as under:-

“It needs no special emphasis to state that a Judge is not to be guided by any kind of notion. The decision-making process expects a Judge or an adjudicator to apply restraint, ostracise perceptual subjectivity, make one's emotions subservient to one's reasoning and think dispassionately. He is expected to be guided by the established norms of judicial process and decorum. A judgment may have rhetorics but the said rhetoric has to be dressed with reason and must be in accord with the legal principles. Otherwise mere rhetoric, especially in a Judgment, may likely to cause prejudice to a person and courts are not expected to give any kind of prejudicial remarks against a person, especially so, when he is not a party before it. In that context, the rhetoric becomes sans reason, and without root. It is likely to blinden the thinking process. A Judge is required to remember that humility and respect for temperance and chastity of thought are at the bedrock of apposite expression. In this regard, we may profitably refer to a passage from Frankfurter, Felix, in Clark, Tom C.,

For the highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law of which we are guardians-those impersonal convictions that make a society a civilized community, and not the victims of personal rule”.

It has further been held that “What becomes decisive to a Justice's functioning on the Court in the large area within which his individuality moves is his general attitude towards law, the habits of mind that he has formed or is capable of unforming, his capacity for detachment, his temperament or training for putting his passion behind his judgment instead of in front of it.

Thus, a Judge should abandon his passion. He must constantly remind himself that he has a singular master “duty to truth” and such truth is to be arrived at within the legal parameters. No heroism, no rhetorics.”

13. Sub Section 2 of Section 4(B) (A) of the Delhi Special Police Establishment Act, 1946 provides that Director of Prosecution shall function under the overall supervision and control of the Director. Under sub Section 3 of Section 4 (B) (A) of the said Act, the Central Govt. shall appoint the Director of Prosecution on the recommendation of the Central Vigilance Commission. The Director of the Prosecution is the chief functionary of the prosecution wing of the Central Bureau of Investigation and is vested with the powers of directions and control over the prosecuting officers. He is assisted by Legal Advisors, Deputy Legal Advisors, Senior Public Prosecutors, Public Prosecutor and Assistant Public Prosecutor posted in the Head Office/High Courts and Zones/Regions and Branches/Units.
14. Law in the matter of transfers is well settled. Transfer is an incidence of service and is not to be inferred with by the Courts unless it is shown to be clearly arbitrary or visited by malafide or infraction of any prescribed norms of principles governing the transfer. No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice. In this regard the judgment of the **Hon’ble Supreme Court of India** in the case

of **Mohd. Masood Ahmad v. State of U.P. and Ors. (2007) 8 SCC 150** and in **Abani Kanta Ray v. State of Orissa 1995 (Supp.) 4 SCC 169** can be referred to.

15. A Division Bench of this Court in **Sujata Kohli v. High Court of Delhi** having been affected by the order of the posting and transfer filed a writ petition in this Court and while dealing with the issue, this Court has observed as under:-

“It is not in dispute that transfer is an incidence of service and the High Court, which has the superintending control over the subordinate judiciary, is empowered to decide about the posting, transfer, promotion, etc. of the judicial officers belonging to the subordinate judiciary. Law in the matter of transfers is also well settled by catena of judgments of the Apex Court. Instead of taking note of all these judgments, it would be sufficient to refer to two decisions of the Apex Court wherein the Court considered its earlier decisions. First case, note whereof we take, is *Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey & Ors., V (2004) SLT 895=AIR 2004 SC 4850*, wherein the Court reinstated the principle of law in the following terms:

“Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by malafide or infraction of any prescribed norms of principles governing the transfer (see *Ambani Kanta Ray v. State of Orissa, 1995 (Suppl) 4, SCC 169*). Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the Court cannot interfere with it (see *Union of India v. S.L. Abbas, AIR 1993 SC 2444*). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fide or

is made in violation of operative any guidelines or rules the Courts should not ordinarily interfere with it.

16. Having considered the facts of the present case in the aforesaid context it was not expected from the Ld. Special Judge either to write a letter to the Director, Central Bureau of Investigation requesting him to cancel the transfer order of Sh. B.K. Singh, Sr. PP posted in his court. He was also not empowered to act beyond his jurisdiction i.e. subject matter of the dispute pending before him. It was not the jurisdiction or authority of the learned Special Judge to question the transfer of Sr. PP posted in the Court. Posting and transfers of the public prosecutors in CBI is the prerogative of Director of Prosecution, CBI or Director CBI. It is the Director of prosecution, who has the administrative and superintending control in the matter of posting and transfer of the Public Prosecutors in different special courts across the country. In the case in hand the arguments were in fact concluded on 10.08.2017 and it is not comprehensible as to why the matter was adjourned for consideration on 25.08.2017 when final arguments were concluded.
17. It is pointed out by the learned Sr. PP for CBI that in fact the new PP started attending the Court w.e.f. 21.08.2017 and before 01.09.2017 he has made himself aware of all the pending cases.
18. It appears that new Public Prosecutor has started appearing in the Court along with Sh. B.K. Singh, learned Sr. Public Prosecutor from 21.08.2017 and matter was adjourned on 25.08.2017 for clarification or filing case law on 11.09.2017.

The Ld. Special Judge preferred to issue a show cause notice to the Director of Prosecution, CBI when his efforts writing a letter dated 06.09.2017 to the CBI failed to achieve desired result. It was followed by show cause notice to the Director of Prosecution, CBI on 11.09.2017 and imposed the costs of Rs.10, 000/- on 20.09.2017 on him without any authority, jurisdiction or justification.

19. Arguments in this case were already concluded before the Ld. Special Judge and simply because the Senior Public Prosecutor was transferred and another PP was posted, there was no authority for the Ld. Special Judge to pass disparaging remarks against the renowned prosecuting agency i.e. CBI or its Director of Prosecution or for imposing a costs of Rs.10,000/- on the Director of Prosecution, CBI.
20. In view of the above discussions impugned order dated 26.09.2017 passed by the Ld. Special Judge is set aside.
21. Writ petition disposed of accordingly.

न्यायमेव जयते

(VINOD GOEL)
JUDGE

JANUARY 29th, 2018
"sandeep"