

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2020

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.5618 of 2020

K.Baskar

... Petitioner

Versus

- 1.The Joint Director,
Central Bureau of Investigation,
South Zone, College Road,
Nungambakkam,
Chennai-600 006.
- 2.The Chief Secretary,
Government of Tamil Nadu,
Secretariat,
Fort St.George, Chennai-9.
- 3.The Additional Chief Secretary to Government,
Government of Tamil Nadu,
Food, Civil Supplies, Consumer Protection,
Secretariat,
Fort St.George,
Chennai-9.
- 4.The Secretary to Government,
Food, Civil Supplies, Consumer Protection and Price Control
Secretariat,
Fort St.George,
Chennai 600 009.
- 5.The Secretary to Government,
Social Welfare and Nutritious Meal Programme Department,
Secretariat,
Fort St.George,
Chennai 600 009.
- 6.The Director cum Mission Director,
Integrated Child Development Services Scheme,
Tharamani,
Chennai-113.
- 7.The Commissioner Social Welfare and Nutritious Meal
Programme,
2nd Floor, Panagal Maligai,
Anna Salai, Saidapet,
Chennai-600 015.

- 8.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Kilpauk, Chennai-600 010.
- 9.T.S.Kumarasamy
No.A2 & A3, SIDCO Industrial Estate,
Andipalayam, Tiruchengode-637 214.
Namakkal District.
- 10.M/s.Christy Fried Gram Industry,
No.A2 & A3, SIDCO Industrial Estate,
Andipalayam, Tiruchengode-637 214.
Namakkal District.
- 11.M/s.Suvarnabhoomi Enterprises Pvt. Ltd.,
No.2 Amman Nagar, Karayampalayam Mylampatti Post,
Coimbatore 641 062, Tamil Nadu.
- 12.M/s.Fair Deal Food Venture Private Limited,
SF.No.2/1A, Door No.18, Shanmugapuram,
48, Kailasampalayam Village,
O.Rajapalayam Post,
Tiruchengode-637 209.
- 13.M/s.Rasi Nutri Foods,
1/67-A & a/67-B, Salem - Trichy Main Road,
Ayeepalayam, Athanur Post,
Rasipuram 636301. Tamil Nadu.
- 14.M/s.Natural Food Products,
Kuttakadu Muthukalipatti,
Rasipuram-637 408,
Tamil Nadu.
- 15.M/s.Arnica Enterprises Private Limited,
Rep. by its Director,
Old No.116, New No.122,
Vellapethampalayam,
Kamdikattu Valasu Post, Avalpoomdurai (Via),
Erode District, Tamil Nadu. ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, directing the 1st respondent to take action against the accused persons as respondents 2 to 15 under Prevention of Corruption Act on the complaint given by the petitioner dated 29.02.2020 and to proceed with the investigation according to law.

For Petitioner : Mr.M.P.Rajavelayutham

For R1 : Mr.K.Srinivasan
Special Public Prosecutor

For R2 to R8 : Mr.A.Nataraja, Public Prosecutor
Assisted by
Mr.S.Karthikeyan
Additional Public Prosecutor

ORDER

The petitioner is a practising Advocate in Madras High Court for the past three years has filed this petition seeking for a direction to the 1st respondent to take action against the respondents 2 to 15 under the Prevention of Corruption, Act based on his complaint dated 29.02.2020.

2.The learned counsel for the petitioner submitted that the petitioner is a vigilante in various social activities for the benefit of the general public including improving transparency and accountability in public institutions, to take issues of corruption by public officials and elected representatives and enforcing rule of law in terms of Government functioning, compliance of governance by institutions to constitutional principles and implementation of development program and formulation of welfare schemes.

3.The learned counsel for the petitioner further submitted that the petitioner obtained information from various sources about the fraud played in awarding of tenders in the Department of Co-operation, Food and Consumer Protection of Government of Tamil Nadu and Social Welfare Department. Tenders were awarded by erring officials who colluded with concerned Ministers in order to select particular entities i.e., 9th 15th respondents. The petitioner was shocked that the respondents 9 to 15 have been indulging in huge scam more than thousand crores for the past several years. The respondents 9 to 15 joined with the other respondents 2 to 8 officials and public servants played foul in various tenders including Sugar, Oil, Dhal, Conversion of Dhal, Transportation of food products and egg, weaning foods from the social welfare department.

4.These entities were continuously made eligible to participate in tenders for supply of the above said items in collusion with the officials of Tamil Nadu Civil Supplies Corporation (TNCSC). The top officials of TNCSC, Food, Civil Supplies, Consumer Protection and Price Control and Department of Social Welfare changed and altered the tender condition, to facilitate and select set of entities related to Christy Friedgram Industries and others. Thereby to disqualify and brush aside all other bidders at inception. The Christy Friedgram Industries and others in collusion with the officials modified the tender rules in favour of them. Hence, unreasonable tender conditions have been framed with the ulterior motive to prevent and eliminate other suppliers from participating in the tender.

5.The learned counsel further submitted that on perusal of the pre-qualification criteria of various tenders would demonstrate the arbitrariness and criminal misconduct of the officials which are as follows:-

(i) For procurement egg for ICDS in Roc.10251/NMP/2019, dated 08.11.2019.

(ii) For weaning foods in ICDS:- Roc.No.1043/NC1(2)/2019, dated 01.02.2019.

(iii) Transportation of food products for TNCSC in MT9/047397/2019, dated 26.10.2019.

(iv) For Palmolein oil - TNCSC :- BS3/03300/2018.

(v) For dal - TNCSC:- NIT No.BS6/28006/2019, dated 03.07.2019.

(vi) for S-30 Grade Sugar - TNCSC:- NIT No.Com1/006275/2019, dated 15.02.2019.

6.In all those orders, the bidders eligible in tender conditions were rejected and pre-qualification criteria were fixed. In such a way, other than the respondents 9 to 15, all other bidders were eliminated. These things have been going on for a long period of time. The respondents 2 to 8 on the instruction of the persons in power have been complacent and connived in commission of misdeeds and thereby, enriched themselves with several thousands of crores and caused huge loss to the Government Ex-chequers. The act of these persons would attract various offences of cheating, forgery, misappropriation and also attract the provisions of the Prevention of Corruption Act, 1988. Since top officials are involved in it, the apprehension of the petitioner is that there would be no proper investigation. If the present investigating agencies of the State are directed to conduct the investigation justice would be denied to him. Hence, the petitioner had sent a representation dated 29.02.2020 to the CBI/1st respondent a premier agency to conduct investigation.

7.The petitioner has submitted his complaint with supporting documents to 1st respondent for registration of the case, conduct investigation on the materials submitted. First respondent failed to take any action. Hence, he filed the present petition.

8.The learned Special Public Prosecutor appearing for the 1st respondent submitted that the complaint with attached documents of the petitioner was received by way of e-mail. The subject matter of the complaint involves State Government officials. Since the 1st respondent is being governed by the Delhi Police Establishment Act, 1946, the consent of the State Government is very much necessary as per Section 5 and 6 of the Act. Hence, the 1st respondent forwarded e-mail and the accompanied documents to the Director of Vigilance and Anti Corruption, Chennai and to the Joint Director of Vigilance and Anti Corruption, Chennai on 10.03.2020. It is for the State to register and conduct the case, if expressively offence is

9. The learned State Public Prosecutor appearing for the respondents 2 to 8 submitted that on 10.03.2020 only the CBI/1st respondent forwarded the complaint. The complaint has to be verified since there are serious allegations. Though serious allegations have been made, the complaint is bereft of any particulars. The petitioner seems to know all these facts only through media, further he is not a bidder to the tenders. Further except for sweeping allegations, there is no specific instance of corruption or any other offence. In any event the Director of Vigilance and Anti Corruption will act as per law on the complaint received.

10. The learned State Public Prosecutor submitted that he would follow the guidelines of Lalita Kumari Versus Government of U.P. and ors reported in 2014 (2) SCC (1). The relevant portion of the citation is extracted here under:-

"111) In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- a) Matrimonial disputes/ family disputes
- b) Commercial offences
- c) Medical negligence cases
- d) Corruption cases
- e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

11.A Division Bench of this Court on a reference in the case of G.Prabakaran Versus The Superintendent of Police, Thanjavur District District and Ors. Reported in MANU/TN/5241/2018 had given a certain directions are follows:-

"35.Accordingly, we answer the references in the following manner, while giving certain directions:

(i) Section 482 Cr.P.C. cannot be invoked in all circumstances.

(ii) It is not an alternative remedy to Section 156(3) Cr.P.C. but a repository of inherent power.

(iii) The normal course of remedy on a failure or refusal to record the information is Section 156(3) of the Code of Criminal Procedure after due compliance of Section 154 (3) Cr.P.C.

(iv) A petition can be filed invoking the inherent jurisdiction of this Court only after the completion of 15 days from the date of receipt of the information by the Station House Officer. The Registry shall not receive any petition before the expiry of 15 days aforesaid.

(v) No petition shall be entertained without exhausting the remedy under Section 154(3) Cr.P.C.

(vi) An informant can send substance of the information to the Superintendent of Police on knowing the decision of the Station House Officer in not registering the case and proceeding with the preliminary enquiry. After conducting the preliminary enquiry, the Station House Officer's decision in either registering the complaint or closing it will have to be intimated to the informant immediately and in any case not later than 7 days. Once such a decision is made, <http://www.judis.nic.in> the informant cannot invoke Section 482 Cr.P.C. as the remedy lies elsewhere.

(vii) The directions issued by the Director General of Police in the circulars referred are to be strictly complied with by all the Station House Officers.

(viii) The affidavit to be filed shall contain particulars regarding the date of complaint, receipt and the date of sending substances of the information to the superintendent of Police under Section 154(3) Cr.P.C. and its receipt. The Registry shall not number any petition without due compliance.

(ix) This Court is not bound to direct the police to register the complaint in all cases notwithstanding the breach of time table furnished in Lalitha Kumari's case.

(x) The judicial Magistrates, while dealing the petitions under Sections 156(3) Cr.P.C. are directed to keep in mind the narratives in Lalitha Kumari's case with specific reference to the cases, which might require a preliminary enquiry before issuing a direction to investigate and after careful perusal of the complaint. The other directions issued by the learned Single Judge in Sugesan Transport's case are upheld.

(xi) Eschewing Section 156(3) Cr.P.C. is only on exceptional and rarest of rare cases. Monstrosity of the offence, extreme official apathy and indifference, need to answer the judicial conscience, and existence of hostile environment are few of the factors to be borne in mind to bring a case under the rarest of rare one. The references stands ordered accordingly."

would be dealt with.

13. This Court considered the rival submissions and perused the materials available on record. It is seen that there are serious allegations made against the officials and their nexus with select group of Tenderers/Suppliers, who are entrusted with the Task of Supply of articles and commodity for the needy public. Since the allegations are serious and there is no reason to be apprehensive, the Director, Vigilance and Anti corruption of the State shall take appropriate action without loss of time uninfluenced how mighty the persons involved. However mighty a person the Law is above him.

14. In the constitutional bench in the case of State of West Bengal and Others Versus Committee for Protection of Democratic Rights, West Bengal and ors. reported in (2013) 3 SCC 571, had observed as follows in entrusting cases to CBI:-

"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 Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the 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 allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil 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 the 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 investigations."

15. The petitioner had rushed to this Court without following the decisions of the Hon'ble Apex Court as well as this Court. There is no exceptional situation to invoke the extra-ordinary power of this Court to order directing the

first respondent to register and investigate the case on the complaint of the petitioner dated 29.02.2020. In the result, this Criminal Original Petition stands dismissed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vv2

To

- 1.The Joint Director,
Central Bureau of Investigation,
South Zone, College Road,
Nungambakkam,
Chennai-600 006.
- 2.The Chief Secretary,
Government of Tamil Nadu,
Secretariat,
Fort St.George, Chennai-9.
- 3.The Additional Chief Secretary to Government,
Government of Tamil Nadu,
Food, Civil Supplies, Consumer Protection,
Secretariat,
Fort St.George,
Chennai-9.
- 4.The Secretary to Government,
Food, Civil Supplies, Consumer Protection and Price Control
Secretariat,
Fort St.George,
Chennai 600 009.
- 5.The Secretary to Government,
Social Welfare and Nutritious Meal Programme Department,
Secretariat, Fort St.George,
Chennai 600 009.
- 6.The Director cum Mission Director,
Integrated Child Development Services Scheme,
Tharamani, Chennai-113.
- 7.The Commissioner Social Welfare and Nutritious Meal
Programme,
2nd Floor, Panagal Maligai,
Anna Salai, Saidapet,
Chennai-600 015.

8.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Kilpauk, Chennai-600 010.

9.The Special Public Prosecutor,
High Court, Madras.

10.The State Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.P.Rajavelayutham, Advocate, S.R.No. 22083

CRL.O.P.No.5618 of 2020

SAI (CO)
GN(06/08/2020)



WEB COPY