

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.08.2020
PRONOUNCED ON : 19.08.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.10645 of 2020

N.S.Ziaudeen ... Petitioner/Complainant

Vs.

The Central Bureau of Investigation,
Rep. by its Joint Director,
Shastri Bhavan,
Chennai-600 006.

... Respondent/Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to direct the respondent to register a case on the basis of the petitioner's complaint in S.R.No.2974 of 2019 and investigate into the same and file a final report as ordered by the Court of Principal Special Judge for CBI cases cum VIII Additional City Civil Court, Chennai by an order dated 01.07.2019 and to proceed in accordance with the procedure established by law.

For Petitioner : Mr.N.S.Sivakumar
For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor

ORDER

The petitioner has filed this petition, seeking direction to the respondent to register a case, on the basis of the petitioner's complaint in S.R.No.2974 of 2019 and investigate the same and file a final report as ordered by the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai, by order dated 01.07.2019.

2.The gist of the case is that the petitioner's son Zia Abdul Sathar had appeared for NEET Exam in May 2018 at Chennai and his Roll Number is 511507394. He secured 216 marks out of 720 marks in the NEET Examination, as per result published on 06.06.2018. The petitioner's son belongs to Lubbai Muslim, a Backward Class Muslim. He applied for MBBS course in Government Colleges in Tamil Nadu under Backward Class Muslim Community, Government Quota in Management Colleges in Tamil Nadu, Christian

Medical College, Vellore, Central Universities, Deemed Universities and also 15% quota in Government Medical Colleges in all over the States of India. His application number is 133201 and he is eligible for government quota under the category of BCM. The cut off marks for BCM is 241. If the selection committee had conducted the counselling in a transparent manner, the petitioner's son would have got participated in the counselling and would have had a fair chance to secure a medical seat in any one of the Government colleges under Backward Class Muslim quota (Minority Quota).

3. According to the petitioner, his son was eligible for admission for Christian Medical College, Vellore and also eligible for seat in the Management quota of the private colleges, but he was not given any admission. It is further alleged that the petitioner's son has applied for MBBS in the central universities and deemed universities in 15% quota in the Government Medical Colleges in all the State of India. The petitioner has deposited a sum of Rs.2 lakhs and Rs.5,000/- as early as on 14.06.2018 through online, but his son did not get an opportunity in the first and in the second round and mop up round, even though he was eligible and qualified. When the petitioner contacted through help line on 30.08.2018, he was informed that he could attend vacancy found at Kolar Gold Mine at SDU Medical College. Thereafter, the petitioner's son rushed along with his mother to sit for counselling, but again he was denied opportunity.

4. The sum and substance of the complaint is that the counselling was not transparent. The President of India, by Ordinance 8 of 2018, dated 26.09.2018, suspended the Medical Council of India for corrupt and unlawful acts of the Medical Council officials. The petitioner's son was deprived his right to appear for counselling, due to unfair practise followed and surrender of 128 seats to the State Government. Had the seat has not been surrendered, the petitioner's son had got a fair chance of getting selected under All India Quota.

5. The petitioner got calls from Bangalore, Maharashtra and New Delhi and was informed that he could get seat in Government Medical Colleges. They asked the petitioner to visit them in person to get the seat by paying Rs.30 lakhs in any of the Government Medical College in Tamil Nadu, Rs.25 lakhs in any of the Government Medical College in Madhya Pradesh and in Uttar Pradesh at Rs.20 lakhs for a seat in any Government Medical College, subject to an advance of Rs.50,000/- and the balance can be given after getting the admission card. These messages were received from various contact numbers from Bangalore, Maharashtra and New Delhi. The petitioner had made application for MBBS as many as 190 colleges, including the central

universities, deemed universities and AI Quota. Even persons, who had obtained lower marks, had been admitted in Medical Colleges in Tamil Nadu. The petitioner's son was not given a seat under OBC Category and Minority Category. Hence, the petitioner had filed a Writ Petition before this Court in W.P.No.12096 of 2018. This Court by order dated 19.12.2018, dismissed the petition for the reason that it becomes infructuous. From the letter of Director General of Health Service, New Delhi, it is seen that if a candidate allotted a seat in the first round of counselling and if the candidate does not report or join the college where he has been allotted a seat, would not be penalised and is eligible to appear for the subsequent rounds as per MCI rules.

6.The petitioner's son had also applied for BDS courses and he could not get seat. On account of mistakes and unorganized practises of the Medical Council of India, the petitioner's son was deprived of his right of getting seat. The network of corruption prevails from Kashmir to Kanyakumari. The petitioner sensing foul play, corruptive practice and nepotism in the selection process for MBBS admission, lodged a complaint in S.R.No.2974 of 2019 to the respondent to conduct enquiry and book the culprits, who indulged in corruptive practices. The act of the persons in conducting NEET Exam would attract offence under Section 7 of the Prevention of Corruption Act, 1988. The petitioner had sent a complaint to the respondent on 29.12.2018, which was received by them on 02.01.2019. Since no action was taken on the complaint of the petitioner, the petitioner filed a petition before Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai to entertain his complaint under Section 26 of the Prevention of Corruption Act, 1988 and to give direction to the respondent to investigate the offence.

7.The learned counsel for the petitioner submitted that the petitioner filed a complaint before the Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai stating about the various malpractices adopted by the officials of Medical Council of India. The officials of Medical Council of India have joined hand in glove in depriving medical seat for the petitioner's son, who was eligible as per the eligibility norms. He further submitted that there are brokers, who are in connivance with the officials of Medical Council of India for getting information of prospective candidate. The officials of Medical Council of India are furnishing the information of prospective candidates and the brokers received huge sums of money as bribe for getting admission in the medical course. The petitioner in his complaint had given details how in a scheme manner, the petitioner's son was deprived his seat in medical college. The respondent, though received the complaint of the petitioner dated 29.12.2018, failed to take any action. This

illegal act is continuing even today. The President of India, by ordinance 8 of 2018, had suspended the Medical Council of India, since the Medical Council of India did not perform its obligation and duty. As per the Act, the petitioner's apprehension that the officials of NEET and MCI are corruptive. Despite the complaint had been given to the respondent, the respondent failed to take any action on the complaint. Hence, the petitioner filed the petition in S.R.No.2974 of 2019 before the Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai. The learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai by order dated 01.07.2019 passed the order as follows:-

"This complaint has been filed by the complainant under Section 156(3) Cr.P.C for the offence under Section 7(b) of the Prevention of Corruption Act, 1988 to direct the respondent to register a case on the complaint dated 29.12.2018 and investigate the same and file final report and punish the accused persons in accordance with law.

Forwarded to Station House Officer to enquire and Register a Case and Report."

8.As per the above order, the complaint was forwarded to the Station House Officer to enquire and register a case and report. After receiving the complaint, the respondent failed to register a case and investigate as per the guidelines given by the Hon'ble Apex Court in the case of "Lalita Kumari Versus Government of Uttar Pradesh reported in (2014) 2 SCC 1". The respondent forwarded the complaint to the Joint Secretary (Vigilance), Ministry of Health & Family Welfare on 28.01.2019 and the same informed to the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai on 30.08.2019. Thereafter, the respondent had not conducted any enquiry, register case and failed to file a report, as per the directions of the Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai. Hence, the present petition is filed.

9.The learned Special Public Prosecutor for CBI Cases appearing for the respondent submitted that on receipt of the order of the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai, dated 01.07.2019, the respondent had forwarded the complaint to Medical Council of India. The order of the Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai is to enquire, register a case and to report. After forwarding the complaint to Medical Council of India, the same was informed to the learned Principal Special Judge for CBI Cases, VIII Additional

City Civil Court, Chennai.

10. The learned Special Public Prosecutor further submitted that the Hon'ble Supreme Court clearly held that the Special Judge cannot order and issue a direction to the Central Bureau of Investigation to register a complaint and to investigate the case. In support of his contention, the learned Special Public Prosecutor relied upon the judgment of the Hon'ble Supreme Court in the case of "Central Bureau of Investigation Versus State of Rajasthan and another reported in (2001) 3 Supreme Court Cases 333", which was followed in the case of "Central Bureau of Investigation Versus State of Gujarat reported in AIR 2007 SC 2522" and Full Bench Judgment of the Hon'ble Apex Court in the case of "State of West Bengal & Ors. Versus the Committee for Protection of Democratic Rights, West Bengal & Ors reported in AIR 2010 SC 1476".

11. In the case of "Central Bureau of Investigation Versus State of Rajasthan and another reported in (2001) 3 Supreme Court Cases 333", the Hon'ble Apex Court had held that "no Magistrate discharging duties under the Code has the power to direct investigation of any particular offence by the CBI. It is only the Court of Writ exercising powers under Article 32 & 226 of the Constitution or the Apex Court under Article 142 can direct investigation by CBI if the circumstances so warrant.". Further, the Full Bench of the Hon'ble Apex Court in the case of "State of West Bengal & Ors. Versus the Committee for Protection of Democratic Rights, West Bengal & Ors reported in AIR 2010 SC 1476, had held that the Supreme Court and the High Courts have power to direct investigation by the CBI in any offence.

12. Thus, it is submitted that the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai, has no power to direct the Central Bureau of Investigation to register a case. Hence, the order of the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai is bad in law and patently erroneous. The grievance of the petitioner is that the respondent has to conduct an enquiry and book the culprits, who indulged in corruptive practices in the selection process for MBBS admission, but the petitioner is unable to name the persons, who were actually involved in the crime or the perpetrators, who are directly or indirectly involved with the public servants or the involvement of the public servant in the corruptive practises. Further, the petitioner invoking Section 26 of the Prevention of Corruption Act, 1988 is under misconception. Section 26 of the Prevention of Corruption Act, 1988 stated about the appointment of Special Judges under Act 46 of 1952 of the Criminal Law (Amendment) Act, 1952, in which it is stated that the Special Judges shall continue to deal with all the proceedings pending before him on

such commencement in accordance with the provisions of this Act.

13. Thus, the complaint of the petitioner is devoid of any verifiable/actionable input and does not reveal commission of any cognizable offence. As the complaint was on the issues of medical counselling, it can only be redressed by the Medical Council of India and that is the reason, the complaint was forwarded to the Joint Secretary (Vigilance), Ministry of Health & Family Welfare on 28.01.2019 for appropriate action. Therefore, it is the petitioner, who is to follow it up with the Ministry for his grievance. If the Ministry on enquiry finds any corruptive practise adopted by the public servant or public authority and the same attracting the Prevention of Corruption Act, a case would be registered and investigated. At this stage, the petition is premature, since the complaint of the petitioner is bereft of facts on particulars and materials.

14. In view of the complaint forwarded to the Joint Secretary (Vigilance), Ministry of Health & Family Welfare, the petitioner by way of Rejoinder had submitted that the respondent having not challenge the order of the Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai dated 01.07.2019, now cannot take such stand and ought to obey the orders of the Principal Special Judge for CBI Cases, Chennai.

15. This Court considered the rival submissions and perused the materials available on record.

16. It is seen that the Hon'ble Apex Court in the case of "Central Bureau of Investigation Versus State of Rajasthan and another reported in (2001) 3 Supreme Court Cases 333" had deliberated the powers of the Magistrate under Section 156(3) Cr.P.C in forwarding the complaint to the CBI to conduct investigation. The said judgment has been followed in the case of "Central Bureau of Investigation Versus State of Gujarat reported in AIR 2007 SC 2522" and held that "Magisterial power cannot be stretched under the said provision beyond directing the officer incharge of a police station to conduct the investigation and no such direction can be given to the CBI.". Further, the Constitutional Bench of the Hon'ble Apex Court in the case of "State of West Bengal & Ors. Versus the Committee for Protection of Democratic Rights, West Bengal & Ors reported in AIR 2010 SC 1476", held that "This extra-ordinary 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 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."

17. In view of the above, it is clear that the power of directing CBI to register and investigate the case is vested only with the Hon'ble Supreme Court and High Courts and not with the Special Judges/Magistrates. The Special Judges has no power under Section 156(3) Cr.P.C to direct CBI to investigate a case. Thus, the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai, has no power to direct the Central Bureau of Investigation to register a case.

18. Hence, the order dated 01.07.2019 in S.R.No.2974 of 2019 passed by the learned Principal Special Judge for CBI cases, VIII Additional City Civil Court, Chennai is null and void. In the result, the petition is dismissed.

s/d-
Assistant Registrar (CO)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Subordinate Judge for CBI Cases, VIII Additional City Civil Court Chennai
2. The Joint Director, Central Bureau of Investigation, Shastri Bhavan, Chennai.
3. The Special Public Prosecutor, High Court, Madras.

VGI (CO)
SP(05/10/2020)

CrI.O.P.No.10645 of 2020