

IN THE HIGH COURT AT CALCUTTA

(Appellate Side)

CONSTITUTIONAL WRIT JURISDICTION

MAT No.158 of 2021

with

CAN No. 1 of 2021

The Central Bureau of Investigation

Vs.

Anup Majee and Others

With

MAT No.167 of 2021

with

CAN No. 1 of 2021

Anup Majee

Vs.

Union of India and Others

Mr. Tushar Mehta, Solicitor General of India,
Mr. Y.J. Dastoor, Additional Solicitor General,
Mr. S.V. Raju, Additional Solicitor General with
Ms. Kanu Agarwal and Mr. Samrat Goswami, Advocates

...Advocates for Appellant in MAT
158/2021 and Respondent No.2 in MAT
No.167/2021

Mr. Siddharth Luthra,
Mr. Siddharth Dave, Senior Advocates with
M/s Ayan Bhattacharya, Sabir Ahmed, Aniruddh Agarwalla,
Amit Agarwalla, Advocates

...Advocates for the Appellant in MAT
No.167 of 2021/Respondent No.1 in MAT
No.158 of 2021

Mr. Kishore Dutta, Advocate General,
Mr. Abhratosh Majumder, Additional Advocate General with
Mr. Subhabrata Dutta and Debashis Sarkar, Advocates

... Advocates for the State

M/s Phiroze Edulji and Debu Chowdhury, Advocates

...for the U.O.I.

ORDER

1. Challenge in both the aforesaid appeals is to the order dated February 03, 2021 passed by the learned Single Judge in W.P.A. No.10457 of 2020.

2. The writ petition was filed praying for quashing of F.I.R. and further proceedings thereto by one of the accused. The F.I.R. was registered by the Central Bureau of Investigation (for short, 'CBI') on November 27, 2020. All the three parties to the litigation, namely, one of the accused, the State of West Bengal and the CBI are aggrieved by the judgment of the learned Single Judge. As all the three parties to the litigation before the learned Single Judge are aggrieved by the judgment raising different grounds. Two appeals have been filed and as stated by learned Advocate General on February 09, 2021, the State is also contemplating to either file or cross objections. In our opinion, it makes out a case for admission of the appeals, which in any case raise legal issues to be considered. The writ petition was decided without even granting opportunity to the parties to file affidavits. Hence, even the pleadings will have to be completed.
3. The appeals are accordingly admitted. The respondents shall be at liberty to file their affidavits on or before March 23, 2021 with copy in advance to the Counsels opposite. Reply, if any thereto, be filed on or before April 12, 2021. The matter will appear in the list for hearing on April 27, 2021.
4. At the time of arguments much stress was laid by Mr. Tushar Mehta, learned Solicitor General of India appearing for CBI and Mr. Siddharth Luthra and Mr. Siddharth Dave, learned Senior Advocates appearing for the appellant/writ petitioner for grant of interim relief.
5. Inter-alia, the arguments raised by the learned Solicitor General of India are that the direction of the learned Single Judge is restricting the course of investigation to only the Railway areas is total without jurisdiction, as investigation of a case cannot be circumscribed by territorial jurisdiction. A conjoint reading of Sections 5 and 6 of the Delhi Special Police Establishment Act, 1946 (for short, 'the 1946 Act') provides that no permission of the State Government is required for registration of a case for carrying out investigation in the Railway area, which necessarily would mean the property in which the Railways has right, title or interest, in any

manner. As far as applications of the 1946 Act to the State of West Bengal, reference was made to the notification issued under Section 5 thereof on February 18, 1963. An accused cannot choose the agency which will carry out investigation of the case. Any criminal offence is an offence against the State where the accused has to be brought before the Court.

6. Issue sought to be raised by the writ petitioner or the State of West Bengal is regarding jurisdiction of CBI to carry investigation, for which there is no dispute otherwise. The issue can be examined in present appeals. However, if the process of investigation is stalled at this stage, material evidence which may have to be collected, may be lost and the accused may be able to achieve the objectives for which frivolous litigation has been filed. He further submitted that no prejudice as such will be caused to the writ petitioner. In case he finally succeeds, entire material collected during investigation will be transferred to the investigating agency which is found to be competent to carry out investigation but the delay will not be in the interest of anyone except the writ petitioner. Process of investigation against other accused arrayed in the FIR will also be jeopardized.
7. He further referred to various Entries in List I of the Schedule VII to the Constitution of India with reference to investigation by the Central Investigating Agency and also pertaining to Railways, namely, Entry Nos.8, 22 and 80. With reference to Railway area, reference was sought to be made to definitions contained in Sections 2(31) and 2(32A) of the Railways Act, 1989 (for short 'the 1989 Act'). It was further argued that coal has been held to be a natural resource for which the 'Doctrine of Public Trust' has also applied by the Hon'ble Supreme Court of India. The case in hand pertains to illegal mining and transportation of coal through Railways in connivance with officers of the Eastern Coalfield Limited, Railways, C.I.S.F. and some other private persons including the writ petitioner. During investigation carried so far it has come on record that the area of offence is not limited to

the State of West Bengal as it has offshoots in other States as well. However, the matter is still being investigated.

8. The argument raised by Mr. Kishore Datta, learned Advocate General, *inter-alia* related to the constitutional scheme of federal system in our country. He submitted that for application of the provision of the 1946 Act consent of the State Government is required under Section 6 thereof. The same was granted vide notification dated August 2, 1989, however, was withdrawn later on vide notification dated November 16, 2018. Hence, no investigation for any offence committed within the territorial jurisdiction of the State of West Bengal can be carried out by the CBI. He further referred to various provisions of the 1989 Act, the Railway Protection Force Act, 1957 and Rules framed thereunder to submit that, there is complete machinery provided for investigation of offences even pertaining to Railway property. Hence, there was no occasion for registration and investigation of the case by CBI. He did not dispute of the fact that if any offence takes place in the area within the jurisdiction of Railways, Railway Protection Force will take cognizance and have jurisdiction to investigate and not the State police. The judgments relied upon by the learned Solicitor General of India, were sought to be distinguished stating that in those cases consent of the State had been given under Section 6 of the 1946 Act.
9. Mr. Siddharth Luthra, learned Senior Counsel appearing for the appellant/writ petitioner submitted that the 1946 Act has limited jurisdiction. In terms of section 3 thereof initially investigation was permitted in connection with matters concerning departments of the Central Government. However, the words '*in connection with matters concerning Departments of the Central Government*' were deleted vide Amendment Act No.26 of 1952 with effect from March 06, 1952. He further submitted that even in the notification issued under section 5 of the 1946 Act the Railway Area has not been specifically mentioned as it simply mentions State of West Bengal. In the absence thereof the provisions of the 1946 Act cannot be

made applicable to the Railway Areas within the State of West Bengal. In fact, the words 'Railway Areas' have not been defined under the 1946 Act. Hence, the statute to that extent is vague and the CBI cannot be given unlimited powers to investigate the cases where no territorial jurisdiction is defined. It was further argued that a plain reading of the FIR shows that the offence was committed within the territorial jurisdiction of State of West Bengal as it was in the mining area of Eastern Coalfield Ltd. It may have extended to the Railway Area but the primary offence being within the jurisdiction of the State of West Bengal, protection of the 1946 Act cannot be taken by CBI to investigate the offence. Place of occurrence of the offence is also shown in the mining area of Eastern Coalfield Ltd. The question raised in the writ petition was regarding jurisdiction of authority, which will investigate the offence. As it goes to the root of the case, the investigation and any coercive action against Anup Majee deserves to be stayed.

10. In addition to the submission made by Mr. Siddharth Luthra, learned Senior Counsel, Mr. Siddharth Dave learned Senior Counsel appearing for appellant/writ petitioner submitted that jurisdiction of the investigating agency under the 1946 Act extends to the Union Territories and for any investigation in a state consent of the state concern is required. Initially, the word 'state' was mentioned in the Preamble to the 1946 Act, however, the same was deleted with effect from April 01, 1951.
11. In response, Mr. Tushar Mehta, learned Solicitor General of India submitted that once notification has been issued under section 5(1) of the 1946 Act including the State of West Bengal therein, the Railway Area which is part of the state is automatically included therein. If read along with section 6 of the 1946 Act even if the state has withdrawn the consent for investigation of the cases in terms of the 1946 Act, the same cannot be withdrawn with reference to the Railway Areas. He further referred to various provisions of Cr.P.C. in terms of which investigation, arrest of the accused can be made even beyond the boundaries of the state in which the

FIR is registered, after following due process. Even trial of an offence can be held at any place where a part of the offence is committed. He further submitted that no prejudice as such will be caused to the accused herein if the offence is investigated by the CBI. In case finally this court comes to the conclusion that CBI had no jurisdiction to investigate the offence, the material collected by that time will be transferred to the investigating agency having jurisdiction to investigate. However, any delay in the process will certainly hamper the investigation as during the interregnum the witnesses may be won over or the case property or records destroyed or tampered with.

12. Learned Counsels have referred to various judgments in support of their arguments. However, we are refraining ourselves to discuss those in detail at this stage as the same may prejudice the case of either of the parties at interim stage. At this stage we are only considering the matter on the principles for grant of interim relief.
13. After hearing learned Counsels for the parties we find prima facie merit in the submissions made by learned Solicitor General of India. FIR is not an encyclopaedia. It is merely information of an offence. Learned Counsels for the parties sought to explain word by word thereof. A perusal of the facts stated in the FIR shows that certain facts regarding illegal mining and transportation of the coal by the railways, came to the notice of CBI. Involvement of the officers of the Eastern Coalfields Ltd., Railways, CISF and other departments was found, besides private persons. A reading of the FIR shows that part of stolen coal was recovered from the railway siding. Investigation of the case certainly relates to the various facets, which have concern with the railways. The FIR cannot be dissected at this stage. In terms of the notification issued under section 5(1) of the 1946 Act dated February 18, 1963 the Act has been made applicable to the State of West Bengal. Notification under section 5(1) can be issued for the extension of the provisions of the 1946 Act in any state not being Union Territory for investigation of any offence or class of offence specified in a notification

issued under section 3 thereof. A separate notification has been issued under section 3 of the 1946 Act on February 18, 1963 prescribing various offences committed under different laws including the offence under which the FIR in question has been registered. Section 6 of the 1946 Act which overrides section 5 provides the jurisdiction to investigate any offence in terms of the provision of 1946 Act will not be available to the investigating agency concern within the jurisdiction of a state without the consent of that state. It specifically excludes Union Territories or Railway Areas. Grant or withdraw of consent by the State Government for investigation of offences under the 1946 Act will not have any effect on the Railway Areas. In the case in hand investigation into the railway areas is one of the major parts of the investigation as the coal illegally removed from the mines was transported through railways starting from the railway siding in the mining area to different places. It cannot be disputed that the property of railways is interconnected throughout the country. Even if the term 'Railway Area' has not been defined under the 1946 Act but in our opinion, prima facie guidance can be taken from the 1989 Act, section 2(31) of which defines 'Railway' and 2(32A) defines 'Railway Land'.

14. From a plain reading of the FIR it cannot be suggested that the offence has been committed at one place as these are chain of events, which are inter-linked with the railways and other officers, including those of Para-Military Force, namely, CISF, who are drawing salaries from the Central Government. Proper investigation cannot be carried out if the investigation in such cases is divided in parts, drawing lines on territories once the premier central agency is in the process of investigation.
15. No prejudice as such is going to be caused to one of the accused/the writ petitioner at this stage who is before the Court as none other has approached the Court. In case during the pendency of the present appeals, investigation being carried out by the CBI is hampered, the process of investigation at this stage will certainly be prejudiced, which will not be in

the interest of justice as any delay in the process may be fatal, as it is the question of protection of natural resources for which 'Doctrine of Public Trust' is applicable. Even if at present the investigation is with any other agency the process of investigation in accordance with law has to be followed. It is nobody's case that process is not being followed by CBI. Apparently, the case sought to be set up by the appellant/ writ petitioner is to choose the investigation agency, for which he has not right. His only concern can be fair investigation and trial. Fair investigation in any case will not prejudice the writ petitioner.

16. For the reasons mentioned above, we find prima facie case is made out in favour of the appellant in MAT No.158 of 2021. Accordingly, the impugned order passed by the learned Single Judge shall remain stayed. CAN No.1 of 2021 in MAT No.158 of 2021 is allowed. Prayer for grant of interim relief in MAT No.167 of 2021 is rejected. The stay application bearing CAN No.1 of 2021 in MAT No.167 of 2021, is dismissed.

(Rajesh Bindal, J.)

(Aniruddha Roy, J.)

Kolkata

12.02.2021

PA(SM&SG)