

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 09.05.2023

% **Judgment delivered on: 23.05.2023**

+ W.P.(CRL) 2114/2020 & CRL.M.A. Nos. 5389/2022, 17583/2022
SHANTANU GUHA RAY Petitioner

Through: Mr. Peeyoosh Kalra, Mr. Sudhindra
Tripathi, Mr. Rohan J. Kapoor, Ms
Nikita Anand, Mr. Yaswant SSingh
Baghel, Advs. with Petitioner in
person.

versus

UNION OF INDIA & ANR.

..... Respondent

Through: Mr. Dev. P. Bhardwaj and Ms.
Anubha Bhardwaj, Mr. Sachin Singh
and Ms. Divyanshi Shrivastava, Advs.
Mr. Anupam S. Sharrma, SPP, CBI
with Mr. Prakarsh Airan, Ms.
Harpreet Kalsi, Mr. Abhishek Batra
and Mr. Ripudaman Sharma, Advs.
DSP Pushal Paul, CBI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present Writ Petition has been filed as a Public Interest Litigation (PIL) by the Petitioner who has described himself as a journalist having specialization in investigative, business and human interest news features.

2. The Petitioner has stated that he has exposed Coal Scam in 2011 and Airport scandal in Delhi, and received various awards from time to time.
3. It has been stated that the PIL has been filed for the benefit for public at large and is aimed to uphold the integrity of the capital markets which form the integral and substantial part of the country's economy.
4. The Petitioner has further stated that he has lodged a complaint on 01.08.2017, and the persons named in the Writ Petition have abused their position and helped deviant brokers and politicians to make unlawful and illegal gains.
5. It is further contended that the wrongful gains to the deviant brokers are estimated to the tune of Rs. 50,000/- crores to Rs. 75,000/-. The Petitioner has further contended that he has filed a detailed complaint with Central Bureau Investigation (CBI), New Delhi on 01.08.2017. However, nothing was done in the matter, and, therefore, the Petitioner filed a Writ Petition before this Court i.e. W.P.(Crl.) No. 1042/2019, and same was listed on 22.05.2019. The CBI filed a status report in the matter and finally the Writ Petition was withdrawn by the Petitioner.
6. The Petitioner's contention is, as nothing was being done in the matter, he has been forced to file the present PIL. The Petitioner has prayed for the following reliefs.

“(i) Issue a writ of Mandamus or any other appropriate writ, order or direction directing the Respondent No. 2 to register FIR on the basis of Petitioner's complaint dated 01.08.2017; and

(ii) Issue a writ of Mandamus or any other appropriate writ, order or direction directing the Respondent No. 2 to submit the status report(s) of investigation conducted so far on Petitioner's complaint dated 01.08.2017 before this Hon'ble Court during the pendency of this writ petition; and / or;

Pass such other/further order(s) or direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

7. The matter was listed before this Court on various occasions, and on 02.09.2022 a status report dated 23.03.2022 was filed in sealed cover. It was also informed that there have been further developments in the matter, and this Court directed the Respondents to file a detailed status report as well as directed the CBI to file detailed and exhaustive reply in the matter.

8. The CBI has filed various status reports in the matter, and the status report filed vide order dated 02.09.2022 provides all minute details in respect of the investigation which has been carried out. Paragraph Nos. 1 to 16 read as under:

“1. That while investigation was being conducted by the Respondent no.2-CBI in FIR/RC no AC1 2018 A0011/New Delhi relating to co-location architectural system of NSE which compromised integrity and functioning of NSE i.e. robustness/integrity of National Financial System ,as narrated in initial status report dated 23.03.2022, Securities and Exchange Board of India (SEBI) passed an order dated 11.02.2022 in the matter pertaining to issues at National Stock Exchange (NSE) relating to illegal appointment of Sh.Anand Subramanian as Chief Strategic Advisor ('CSA'), his Re-designation as 'Group Operating Officer' and Advisor to MD,NSE and against Ms. Chitra Ramkrishna for sharing of internal confidential information of NSE with unknown persons.

Respondent no.2-CBI received a letter dated 05.03.2022 from the Ministry of Finance, Government of India to investigate the issues arising out of SEBI's final order dated 11.02.2022. Since the averments in the order dated 11.02.2022 passed by the SEBI were linked with the ongoing investigation being conducted by Respondent no.2-CBI in the above-mentioned FIR/RC, investigation was taken up immediately.

2. That it was revealed during investigation that Ms. Chitra Ramkrishna and Sh. Anand Subramanian entered into criminal conspiracy and in pursuance thereof, Ms. Chitra Ramkrishna abused her official position as Joint Managing Director (JMD) as well as Managing Director (MD) of NSE to illegally and arbitrarily appoint Sh. Anand Subramanian as Chief Strategic Advisor to MD, NSE.

Ms. Chitra Ramkrishna arbitrarily and disproportionately hiked the compensation of Sh. Anand Subramanian and re-designated him as Group Operating Officer (GOO) without taking approval of Nomination and Remuneration Committee (NRC) of NSE or NSE, Board. Ms. Chitra Ramkrishna exercised undue influence on the concerned departments while sending replies to SEBI and S.N. Ananthasubramanian & Co. (SNACO), Secretarial Auditor, SEBI.

On the basis of investigation conducted by Respondent no.2-CBI in this regard, report under section 173 Cr.P.C. was filed on 21.04.2022 against Ms. Chitra Ramkrishna and Sh. Anand Subramanian for commission of offences punishable u/s 120-B IPC r/w section 13 (1)(d) r/ 13 (2) PC Act 1988 and substantive offences thereof. The competent authority accorded sanction for prosecution against Ms. Chitra Ramkrishna and Sh. Anand Subramanian. Further investigation was continued with regards to the other allegations/averments mentioned in the FIR/RC.

3. That Ms. Chitra Ramkrishna was arrested on 06.03.22 and Anand Subramanian was arrested on 24.02.2022. They are presently under Judicial Custody. Their Bail Petitions being

Bail Application 1522 of 2022 and Bail Application 1698 of 2022 respectively, were heard at length by Co-ordinate Bench of this Hon'ble Court wherein vide common order dated 16.08.2022, the judgement was reserved for orders.

4. *That in pursuance of further investigation being conducted by the Respondent no.2-CBI in FIR/RC no AC1 2018 A0011, it was revealed that Sanjay Gupta, Director of OPG Securities Pvt. Ltd. entered into a criminal conspiracy with co-accused Aman Kokrady and Vikas Goenka (both employees of OPG Securities Pvt. Ltd) and they exploited the weakness in the NSE Tick By Tick/TCP- IP architecture for dissemination of data to the collocated trading members. This enabled OPG Securities Pvt. Ltd. to login first to the server of NSE and get the data split-second faster than others leading to unfair advantage.*

5. *That it was revealed during investigation that the accused gained advantage by logging to the secondary server and by getting the data before the other trading members, they carried out their trades and thus deceived NSE and the other trading members and retail investors who also wanted to do the same trade and made illegal profits.*

6. *That it was revealed during investigation that accused disregarded the rules and regulations/circular/ guidelines of NSE that were issued for the co-located trading members. The accused took advantage of the absence of any load balancer and randomizer in the F&O Segment and unauthorisedly logged into the secondary server without taking permission from NSE (many times they logged in first and second). They illegally and fraudulently got the data early and used it to carry out their trades. In order to remain in the Secondary sever to the NSE that OPG Securities Pvt. Ltd. falsely stated that they had developed an Automatic Failover System to go to/log in to the Secondary Server. However, it was revealed during investigation that OPG Securities Pvt. Ltd. did not have any Automatic Failover System. It was also falsely stated by OPG Securities Pvt.Ltd.to the NSE that they were conducting some tests and be allowed to remain in the Secondary Server. OPG*

Securities Pvt. Ltd. was supposed to access the Secondary/Fallback server of NSE only in case of any disruption/disconnection in the primary server, however, in pursuance of the criminal conspiracy, OPG Securities Pvt. Ltd. deliberately, illegally and unauthorizedly accessed Secondary/Fallback server repeatedly by continuously ping to it.

7. *That it was further revealed that that through several omissions and commissions, Ms. Chitra Ramkrishna misused her official position, shielded the inherent weaknesses of the TBT/TCP-IP TBT data dissemination architecture which was prone to manipulation. This clandestinely encouraged the other co-conspirators to carry out their offences. Her omissions and commissions aided OPG Securities Pvt. Ltd. to unauthorizedly and illegally login to the secondary server, get data first, carry out trade and obtain illegal benefits at the cost of other trading members and retail investors. Through the illegal access to the secondary server OPG Securities Pvt. Ltd. increased its profits. By getting the data first, it facilitated the other co-conspirators to increase the volume of trade and thus earn more profits.*

8. *That it has also revealed that Ms. Abhilasha Kukreja @Abhilasha Thakur in criminal conspiracy with Sanjay Gupta, knowingly and deliberately destroyed the electronic evidence/ emails related to the case. Further, Sanjay Gupta and Vikas Goenka deleted the WhatsApp chat containing incriminating chats which would have otherwise brought to fore their role in the matter. Sanjay Gupta had also reset his phone before handing it over for examination by the Forensic Auditor.*

9. *That during the course of investigation it has come to fore that SEBI had conducted inquiry into the role of other co-located Trading Members. The role of these trading members are required to be looked into.*

10. *That searches were carried out on the basis of Search Warrants Us 93 CrPC at the office premises linked to the*

following co-located trading members located at Delhi/NCR, Gurgaon, Mumbai, Kolkata, Gandhinagar:

(i) Adroit Financial Services Private Limited, (ii) Crimson Financial Services Pvt. Ltd., (ii) GKN Securities, (iv) Millennium Stock Broking Pvt. Ltd., (V) OPG Securities Pvt. Ltd., (vi) Pace Stock Broking Services Private Limited, (vii) Parwati Capital Market Private Limited, (vi) Share India Securities Limited, (ix) SMC Global Securities Ltd., (x) Tower Research Capital Markets India Private Limited, (x) Way2wealth Brokers Private Limited.

Searches were also carried out Us 165 CrPC at other office premises of M/s Pace Stock Broking Services Private Limited and Share India Securities Limited.

The incriminating material that have been seized are under scrutiny. The digital data including the email dumps, trading data, financial data etc. of the stock brokers that have been collected are also being analysed for more details relating to the case.

11. That the allegations against Sh. Ajay Narottam Shah are being investigated into in details. Hence searches were carried out at the following places at Mumbai

(1) office and residential premises of Ms. Sunita Thomas, Director, Infotech Financial Pvt. Ltd.. (i) Residential premises of Sh. Krishna Dagli, Director, Infotech Financial prt. Ltd. (ii) Office premises of M/s Chanakya Tradevistas LLP: (iv) Official premises of M/s Infotech Financial Pvt.Ltd.;

The incriminating material that have been seized are under scrutiny. The digital data including the email dumps, trading data, financial data etc. that have been collected are also being analysed for more details relating to the case.

12. *That the role of the officials of SEBI are also being looked into in details. Hence searches were carried out U/s 165 CIPC at the Office premises of Shri Balveer Singh Choudhary at Mark Corporate Advisors at Mumbai.*

13. *That supplementary chargesheet has been filed against Sanjay Gupta, Aman Kokrady, Vikas Goenka, Ms. Abhilasha Kukreja @ Abhilasha Thakur, M/s OPG Securities Pvt. Ltd. (through its Authorised representative) and Ms. Chitra Ramkrishna for commission of offences punishable under section 120B r/w section 201, 204, 420IPG and under section 85, 66 r/w 43 of IT Act 2000 and under section 13(2) r/w 13(1)(d) PC Act, 1988 and substantive offences thereof.*

14. *That Sanjay Gupta, Director of OPG Securities Pvt. Ltd. was arrested on 21.06.2022. He is presently under Judicial Custody.*

15. *Two other FIRs pertaining to criminal irregularities in the functioning of NSE have also been registered and are under investigation.*

16. *That further investigation of the case is continuing with regard to the other allegations against the officials of SEBI/ NSE and also on the other allegation related to the FIR/RC.”*

9. The aforesaid states report reveals a charge-sheet has been filed in the matter, supplementary charge-sheet also has been filed in the matter, and the further investigation in the case is continuing with regard to the other allegations with respect to the Officials of SEBI/ NSE and also in respect of other allegation related to the FIR/RC.

10. This Court again vide order dated 14.02.2023 further directed the CBI to inform the progress which has taken place in the matter, and a status report was filed on 25.02.2023. The Paragraph Nos. 1 to 15 of the said status report reads as under:

"I. Puspall Paul, s/o Late Dhiren Paul, aged 49 years, working as Dy. Superintendent of Police, CBI, EO-III. EO-IX, 5-B, CGO Complex, Lodhi Colony, New Delhi, herein do hereby solemnly affirm and state as under:

- 1. That I am the Investigating Officer of the case and I am well conversant with the facts of this case and therefore, competent to swear the present affidavit.*

That RC ACI 2018 A0011/EO-III was registered by Respondent- CBI on 28.05.2018 for commission of offences punishable u/s 120B, 204 of IPC & Sec. 7, 12, 13(2) r/w 13(1)(d) of PC Act, 1988 and Sec. 66 of IT Act, 2000 on the basis of source information against the following accused:

- a. Shri Sanjay Gupta, R/o G-190, Preet Vihar, New Delhi 110092.*
- b. Shri Aman Kokrady, Ro 25 Waterwoods, Whitefields. Bangalore - 66.*
- c. Shri Ajay Narottam Shah. R/o Faculty Flat No. 3, National Institute of Public Finance and Policy. 18/2, Satsang Vihar Marg, New Delhi.*
- d. M/s OPG Securities Pvt. Lid.. OPG House, 4/10, Asaf Ali Road, Delhi.*
- e. Unknown officers/officials of Securities and Exchange Board of India (SEBI) & National Stock Exchange (NSE), Mumbai.*
- f. Other unknown persons.*

3. That when investigation in the above-mentioned FIR/RC was underway, Respondent-CBI received a reference from the Ministry of Finance. Govt. of India to investigate the issues arising out of SEBI's final order dated 11.02.2022

4. That since the matter was prima facie found linked with the ongoing investigation of CBI and the issues highlighted in SEBI's order dated 11.02.2022 had a serious bearing on the

integrity and functioning of NSE and in turn on the robustness/integrity of National Financial System, it was taken up for investigation in the instant case.

5. *Investigation has established that Ms. Chitra Ramkrishna and Sh. Anand Subramanian entered into criminal conspiracy and in pursuance to the same, Ms. Chitra Ramkrishna abused her official position as Joint Managing Director (JMD) as well as Managing Director (MD) of NSE by illegally and arbitrarily appointing Sh. Anand Subramanian as her Chief Strategic Advisor. Further, in pursuance to the criminal conspiracy. Ms. Chitra Ramkrishna arbitrarily and disproportionately hiked the compensation of Sh. Anand Subramanian, re-designated him as Group Operating Officer (GOO) without taking approval of Nomination and Remuneration Committee (NRC) of NSE or NSE. Board. Further, Ms. Chitra Ramkrishna exercised undue influence on the concerned departments of NSE while sending replies regarding the re-designation of Anand Subramanian to SNACO & SEBI. On completion of Investigation qua these offences a chargesheet was filed on 21.04.2022 against Ms. Chitra Ramkrishna and Anand Subramanian for commission of offences punishable u/s 120-B IPC r/w 13 (1)(d) r/w 13 (2) PC Act. 1988 and substantive offences thereof. However, the further investigation u/s. 173 (8) CrPC was kept open for investigation of remaining allegations of FIR.*

6. *That further investigation established that Sanjay Gupta, Director of OPG Securities Pvt. Ltd. entered into a criminal conspiracy with other co-accused persons viz. Aman Kokrady and Vikas Goenka. both employees of OPG Securities Pvt. Ltd. and committed the following acts*

- *They exploited weakness in the NSE Tick By Tick /TCP-IP architecture in dissemination of data.*
- *They disregarded the rules and regulations/circular/guidelines of NSE that were issued for the co-located trading members, Kun authorizedly logged into the secondary server without taking permission from NSE. illegally and*

fraudulently obtained the data early and used it to carry out their trades.

- *They gained advantage by logging into the secondary server and getting the data earlier than other trading members.*
- *They deceived NSE and the other trading members and retail investors in the process.*

7. *That it was further revealed that through various omissions and commissions. Ms. Chitra Ramkrishna misused her official position, shielded the inherent weaknesses of the TBT/ICP-IP TBT data dissemination architecture which was prone to manipulation. This clandestinely encouraged the other co-conspirators to carry out the offences. Ms. Chitra Ramkrishna's omissions and commissions aided OPG Securities Pvt. Ltd. to unauthorizedly and illegally login to the secondary server, get data first, carry out trade and obtain illegal benefits at the cost of other trading members and retail investors.*

8. *That it was further revealed that Ms. Abhilasha Kukreja @ Abhilasha Thakur in criminal conspiracy with Sanjay Gupta knowingly and deliberately destroyed the electronic evidence. Sanjay Gupta and. Vikas Goenka had also connived in this conspiracy to delete the WhatsApp chat containing their 0.3% incriminating chats which would have otherwise brought to fore their role in the matter .*

9. *That a supplementary chargesheet has been filed on 19.08.2022 against Sanjay Gupta, Aman Kokrady. Vikas Goenka, Ms. Abhilasha Kukreja @ Abhilasha Thakur, M/s OPG Securities Pvt. Ltd. (through its Authorised representative) and Ms. Chitra Ramkrishna for commission of offences punishable u/s 120B r/w 201, 204. 420 IPC and section 85, 66 r/w 43 of IT Act 2000 and 13(2) r/w 13(1)(d) PC Act. 1988 and substantive offences thereof.*

10. *That further investigation u/s 173(8) Cr.P.C. is underway qua other offences mentioned in the FIR/RC as well as other aspects*

which

have come to fore during the course of investigation.

11. That an FIR vide RC2212022E0019 was registered on the basis of source information by CBI on 19.05.2022 u/s 120B r/w 420 IPC and Sec. 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 against the followine

- (i) M/s. SMC Global Securities Limited*
- (ii) M/s. Tower Research Capital Markets India Private Limited (Erstwhile M/s. Shaastra Securities Trading Private Limited)*
- (iii) M/s. ISEC Services Private Limited,*
- (iv) Sh. Mayank Sahu;*
- (v) Sh. Nishant Jain;*
- (vi) Sh. Rajesh Mhapankar;*
- (vii) Sh. Prabhpreet Singh*
- (vii) Sh. Anup Narayan Shende*
- (ix) Sh. Naman Chaturvedi and*
- (x) unknown official of NSE & SEBI and other unknown persons.*

12. It has been alleged in the FIR that the accused persons entered into a criminal conspiracy to defraud and cheat NSE by way of submission of the System Audit Reports in violation of the SEBI Circulars on the said issue, caused wrongful gain to private parties and corresponding loss to NSE. In furtherance of the conspiracy, security/system audit certificates were fraudulently issued or got issued without carrying out actual audit or on the input of a person who was not authorized to carry out such audit. Investigation in the case is underway.

13. CBI received two communications from Ministry of Home Affair (MHA). Government of India duly enclosing a reference from the Enforcement Directorate. In the letter from MHA it was stated that Prima facie the acts of M/s ISEC Services Private Limited ("ISEC") were offences under Indian Telegraph Act and Indian Wireless Telegraphy Act and requested CBI to take necessary action as per the law. The case RC 221/2022/E0030-CBI/EO-II New Delhi was hen registered on 07.07.2022. U/s 120-B r/w 409, 420 of IPC and Sec. 69B3. 72. 72.A of Information Technology Act, 2000 and see 20. 21, 24. 26 of the Indian Telegraph Act of 1885, Section 3 and 6 of Indian Wireless Telegraphy Act, 1933 and Sec. 13(2) r/w 13(1)(d) of PC Act. 1988 against the following:

- (a) M/s ISEC Services Pvt. Ltd, New Delhi
- (b) Smt. Santosh Pandey, Director, M/s ISEC Services Pvt. Ltd.
- (c) Anand Narayan. Director, M/s ISEC Services Pvt. Ltd
- (d) Armaan Pandes. Ex. Director, M/s ISEC Services Pvt. Lid.
- (e) Manish Mittal, Ex. Director, M/s ISEC Services Pvt. Lid.
- (f) Sanjay Pandey, Ex. Director, M/s ISEC Services Pvt. Ltd.
- (g) Naman Chaturvedi. Sr. Information Security Analyst of M/s. ISEC Services Pvt. Lid
- (h) Ravi Varanasi, then Executive Vice President, National Stock Exchange of India Ltd (NSE). Mumbai
- (i) Mahesh Haldipur. the then Head (Premises). NSE. Mumbai

- (j) *Ravi Narain, the then Managing Director, NSE. Mumbai*
- (k) *Ms. Chitia Ramakrishna, the then Dy. Managing Director, NSE*
- (l) *Arun Kumar Singh of Ms. ISEC Services Pvt. Ltd.*
- (m) *And other unknown person(s).*

14. *It has been alleged in the FIR that during 2009 to 2017, the accused persons hatched a criminal conspiracy to undertake illegal interception of telephone calls of NSE employees. In furtherance of the said criminal conspiracy, accused officials of NSE issued Agreement / Work Orders under the title of "Periodic study of Cyber Vulnerabilities at NSE" in favour of M/s ISEC Services Pvt Ltd (ISEC) represented by the Sanjay Pandey. M/s. ISEC thereafter started illegally intercepting the phone calls of NSE employees by installing illegal machines / systems, in contravention of provisions of Indian Telegraph Act, 1885. No permission for this activity was taken from the competent authority as provided u/s 5 of the Indian Telegraph Act, 1885 and no consent of the employees of NSE was also taken in this matter.*

15. *A chargesheet has been filed in this case in the following manner:*

M/s. ISEC Services Pvt. Ltd.(A1): Sanjay Pandey (A2), the then Director of ISEC and Naman Chaturvedi(A3), Sr. Information Security Analyst of ISEC, and Jagdish Tukaram Dalvi (A11) all of ISEC and the officials of NSE viz. Ravi Varanasi (A4), the then Executive Vice President. Mahesh Haldipur(A5), the then Head (Premises): Ravi Narain (A6), the then Managing Director and Chitra Ramakrishna (A7), the then DMD/Managing Director; Anand Subramanian(A8), the then Group Operating Officer: S.B. Thosar (A9). the then OSD and Bhupesh Mistry (A10), the then Manager (Premises) for offences punishable Us. 120B r/w 409, 201 of IPC and Sec. 24. 25 of the Indian Telegraph Act of

1885, Sec.69B & 72A of Information Technology Act. 2000 and Sec. 13(2) r/w 13(1)(c)&(d) of PC Act. 1988 and for substantive offences as under:

(i) Us.24 & 25 of Indian Telegraph Act. 1885 and Sec.69B & 72A of Information Technology Act, 2000 against accused M/s. ISEC Services Private Ltd (A1), Sanjay Pandey (A2) of ISEC, Naman Chaturvedi. (A3) of iSEC and Jagdish Tukaram Dalvi (A11)

(ii) U/s.409 IPC, Sec. 24 & 25 of Indian Telegraph Act, 1885, Sec.69B & 72A of Information Technology Act, 2000 and Sec. 13(2) r/w 13(1)(e)&(d) of PC Act. 1988 against accused Ravi Varanasi(A4), Mahesh Haldipur (A5), Ravi Narain (A6), Chitra Ramakrishna (A7), Anand Subramanian (A8), S.B. Thosar (A9) & Bhupesh Mistry (A10) all of NSE

(iii) U/s.201 of IPC against accused Ravi Varanasi (A4) and Mahesh Haldipur (A5) both of NSE.”

11. The status report filed in the matter makes it very clear that the CBI has investigated the matter, charge-sheets have been filed and it is nobody's case that no action has been taken by the CBI.

12. In the considered opinion of this Court, once the matter has been investigated, charge-sheets have been filed, there appears to be no justification in monitoring the trial. This Court is satisfied with the action taken by the CBI in the matter.

13. The CBI, as a prosecuting agency, has made all possible attempts to investigate the matter and to ensure that the matter is brought to its logical conclusion.

14. In light of the status reports filed by the CBI, this Court does not find any reason to interfere in the matter. Accordingly, the present Writ Petition/ PIL stands disposed of.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

MAY 23, 2023
aks

