

Common Cause Vs. Union of India

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Court : Supreme Court of India

Decided On : Feb-19-2019

Judge : Hon'Ble Mr. Justice Arun Mishra, Hon'Ble Mr. Justice Vineet Saran

Appeal No. : 1843 / 2019

Appellant : Common Cause

Respondent : Union of India

Advocate for Pet/Ap. : Prashant Bhushan

Judgement :

1 REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION WRIT PETITION [C]. NO.54 OF 2019 COMMON CAUSE & ANR. PETITIONER(S) VERSUS UNION OF INDIA & ANR. RESPONDENTS

JUDGMENT

ARUN MISHRA, J.

1. The writ petition has been filed under Article 32 of the Constitution of India seeking issuance of a writ of mandamus to direct Union of India to appoint a regular Director of CBI forthwith by following the procedure laid down in section 4A of the Delhi Special Police Establishment Act, 1946. Prayer has also been made to quash the order dated 10.1.2019 issued by Union of India appointing Mr.

Nageshwar Rao as the interim Director of CBI. A further prayer has been made to issue appropriate writ or direction to the Union of India to ensure that all records of deliberations and rational criteria of shortlisting and selection of the Director, CBI be properly recorded and made available to citizens in 2 consonance with the provisions of the RTI Act. A further prayer has been made to direct Union of India to ensure transparency in shortlisting, selection and appointment process of Director, CBI.

2. It is averred in the petition that the Government of India has failed to appoint Director of CBI as per section 4A of the Delhi Special Police Establishment Act, 1946, and has instead appointed Mr. Nageshwar Rao as the interim Director of CBI in an arbitrary and illegal manner.

3. It is further averred that petitioner no.1, Common Cause is a registered society and petition has been filed in bona fide public interest. However, the average annual income of the society in the last 3 financial years is approximately Rs.1.17 crores. Petitioner No.2 is an RTI activist and had filed applications under the Right to Information Act, 2005 seeking information about the process of appointment of the new Director of CBI in terms of the process adopted for shortlisting candidates, if any, minutes of meetings of the search and selection committee, none of which were provided to her in violation of the RTI Act. The average annual income of petitioner No.2 for the last three financial years is about Rs.5 lakhs. The petitioners have no private/oblique motive. Petitioners have not made any representation to the respondent in this regard because of extreme urgency of the matter in issue except for the letter written by Common Cause on 9.1.2019 for initiating the process of appointment of regular Director, CBI. 3 4. It is also averred that CBI is the premier investigation agency in the country. It investigates corruptionrelated offenses connected with the Central Government and also cases connected with State Government entities. This Court has entrusted important cases of corruption and violation of human rights to CBI for investigation. The Director of CBI is the head of the organisation. He supervises all the work and is responsible for the constitution of investigating teams for probing cases. This Court and the Parliament have made determined efforts to enhance the functional autonomy of CBI Director and limit the extent of executive discretion in the matter of

appointment of this key functionary.

5. In the case of Vineet Narain & Ors. v. Union of India & Anr. (1998) 1 SCC226 this Court issued directions to insulate the CBI from extraneous influence. This Court directed that there should be a selection committee to identify a panel of names for appointment of Director, CBI and thereafter the final selection is to be made by the Appointments Committee of Cabinet (ACC). CBI Director would have a fixed tenure of 2 years. Said direction was issued by this Court to ensure that adhocism in the appointment and functioning of CBI Director is eliminated and independence is maintained.

6. Accordingly, in 2003 amendments were made to the DSEP Act following Vineet Narains case (supra). The provisions were further 4 amended in 2013 to the DSPE Act through the Lokpal and Lokayuktas Act to further insulate the selection committee from government influence. The CBI Director is to be appointed by the Central Government on the recommendations of a committee comprising (a) the Prime MinisterChairperson, (b) the Leader of Opposition (Member) and (c) the Chief Justice of India or any Judge of Supreme Court nominated by him. The Act was further amended in November 2014 to provide for the Leader of the single largest Opposition Party in Lok Sabha to be a member of the selection committee in case no Leader of Opposition is recognised.

7. Section 4A of the Act provides for constitution of the committee. Same is extracted hereunder: 4A. Committee for appointment of Director - (1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of - (a) the Prime Minister - Chairperson. (b) the Leader of Opposition 12 recognised as such in the House of the People or where there is no such Leader of Opposition, then, the Leader of the single largest Opposition Party in that House - Member (c) the Chief Justice of India or Judge of the Supreme Court nominated by him - Member. (2) No appointment of a Director shall be invalid merely by reason of any vacancy or absence of a Member in the Committee. (3) The Committee shall recommend a panel of officers - (a) on the basis of seniority, integrity, and experience in the investigation of anticorruption cases; and (b) chosen from amongst officers belonging to the Indian Police Service constituted

under the All India Services Act, 1951 (61 of 1951) 5 for being considered for appointment as the Director. 8. This Court in C.A. No.4303/2002 has clarified that as regards seniority mentioned in section 4A of the Delhi Special Police Establishment Act, 1946, ordinarily all the IPS officers of the seniormost four batches in the service on the date of retirement of CBI Director, irrespective of their empanelment, shall be eligible for consideration for appointment to the post of Director, CBI.

9. Challenge has been made to the appointment of Mr. Nageshwar Rao as interim Director of CBI on the ground that on 23.10.2018, 2 separate orders were issued by the Central Vigilance Commission and the Govt. of India. The then Director of CBI Mr. Alok Verma was divested of his powers and vide another order issued by the Government of India Mr. Nageshwar Rao was made Director, CBI as an interim measure. The appointment of Mr. Nageshwar Rao as interim Director was not recommended by the selection committee. The Government bypassed the High Powered Selection Committee and in complete contravention of the established procedure unilaterally made the interim appointment. The order dated 23.10.2018 regarding the appointment of Mr. Nageshwar Rao was challenged in this Court in W.P. [C]. No.1315/2018. Vide judgment dated 8.1.2019 this Court quashed the order regarding the appointment of Mr. Nageshwar Rao and relating to Mr. Alok Verma this Court observed :

6. 37. There is yet another issue of significance that arises from the weighty arguments advances in the course of the long debate that has taken place. This is with regard to the application of Section 14, 15 and 16 of the General Clauses Act, 1897 so as to confer power in the Central Government to pass the impugned orders including the order of appointment of an acting Director of the CBI. The preceding discussions and our views on the true and correct meaning of the provisions contained in Sections 4A & 4B of the DSPE Act leaves us convinced that the aforesaid provisions of the General Clauses Act will have no application to the present case in view of the clear and apparent intention to the contrary that unequivocally flows from the aforesaid provisions of the DSPE Act.

10. In Writ Petition (C) No.1315 of 2018, this Court granted the following reliefs:
39. Consequently, in the light of our views as expressed above we set aside the following orders dated 23rd October 2018. (i) of the CVC divesting the powers, functions, duties, supervisory role etc. of Shri Alok Kumar Verma as Director, CBI. (ii) of the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training divesting Shri Alok Kumar Verma, Director, CBI of his functions, powers, duties and supervisory role with immediate effect and until further orders. (iii) of the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training by which one Shri M. Nageshwar Rao, IPS, Joint Director, CBI has been asked to look after the duties and functions of Director, CBI with immediate effect. It is averred in the petition that the appointment of Mr. Nageshwar Rao as interim CBI Director was not made on the recommendations of the High Powered Selection Committee. The committee was completely bypassed and had no role in the appointment of Mr. Nageshwar Rao thereby rendering the appointment as illegal as it is in violation of the 7 procedure for appointment of Director, CBI. The order dated 10.1.2019 states that the appointments committee of the Cabinet has approved the appointment of Mr. Nageshwar Rao "as per the earlier arrangement". As the said arrangement had been quashed by this Court as it was made in violation of procedure for CBI Director as defined in the DSPE Act, Government still invoked its earlier order which stood quashed to once again make appointment of CBI Director, even though it is not the competent authority and does not have any authority to make appointment, without following the due procedure laid down in the DSPE Act. The recommendation of High Powered Selection Committee was necessary, thus, the Government has acted completely in an arbitrary manner and in contravention of DSPE Act to appoint Mr. Nageshwar Rao.

11. It is further submitted that there is a lack of transparency in the appointment of CBI Director. This Court has given various directions to ensure transparency in the process of shortlisting, selection and appointment of functionaries of various independent bodies like the Central Vigilance Commission and Information Commissions to prevent the appointment process being undermined behind a cloak of secrecy.

12. It is further averred that this Court in *Anjali Bhardwaj & Ors. v. Union of India* vide its order dated 13.12.2018 directed the Central Government to proactively disclose the details of shortlisted candidates 8 and the criteria followed. Transparency has to be maintained as observed in *Union of India v. Namit Sharma* (2013) 10 SCC359 Reliance has also been placed on *Centre for PIL & Anr. v. Union of India & Anr. W.P. [C]. Nos.348 & 355/2010*. So far as the appointment of Director CBI is concerned, the Government of India has failed to follow proper procedure for selection and appointment. In December 2018 as reported by the media the Government initiated the process of appointment of Director, CBI as the tenure of Mr. Alok Verma was set to finish on 31.1.2019. Petitioner No.2 filed applications under the RTI Act seeking information about meetings of the Selection Committee, including the date of the meetings, copy of the agenda of meetings, copy of Minutes of meetings, details of the persons who attended each meeting, details of the procedure adopted by the Government to shortlist candidates for consideration by the Selection Committee etc. but no such information had been disclosed. No such copy of shortlisted candidate was provided. Government has responded summarising the directions of this Court in C.A. No.4303/2002 regarding clarification of seniority amongst all the IPS officers of seniormost 4 batches in service on the date of retirement of the Director, CBI which were needed to be considered for filling up the post and giving information about the composition of the Selection Committee under the DSPE Act. Request dated 19.12.2018 (P5) has been placed on record. On 9.1.2019 prayer was made to the Prime Minister and the Leader of the largest party in Opposition to initiate the 9 process for appointment of regular CBI Director hence the petition has been filed.

13. After several recusals by different Benches, ultimately, the case was taken up on 1.2.2019 by this Court on which date the arguments were heard at some length. It was pointed out by Mr. K.K. Venugopal, learned Attorney General for India that High Powered Committee was scheduled to meet on the same day in connection with the appointment of Director of CBI. The case was adjourned to 6.2.2019. However, during hearing on 1.2.2019, the Minutes of the High Powered Selection Committee were placed before the court and it was made clear by the Attorney General for India that the said Committee by majority has decided to

authorise Government of India to appoint an interim Director while passing a resolution and the counsel for the petitioner was told by the Court of such resolution having been passed by the Committee. On that, he had conceded that the ground that Committee under Section 4A has not authorised appointment does not survive. Following is the operative part of the resolution dated 9th /10th January, 2019: (i) Shri Alok Kumar Verma be transferred from the post of Director, CBI and given a suitable assignment for the residual period of his present term ending on 31.01.2019. (ii) the Central Government may post a suitable officer to look after the duties of the Director, CBI till the appointment of a new Director, CBI. 10 14. It is apparent from the decision of the committee under Section 4A that the Government was authorised to post a suitable officer as interim Director due to the vacancy caused by shifting of Mr. Alok Verma. Thus, the submission raised in the petition on behalf of the petitioners that the HPSC has not authorised the appointment of interim Director is totally misconceived and petitioners have failed to verify the aforesaid facts and the petition has been filed in undue haste without verifying the fact whether the appointment has been authorised by the Committee for appointment of Director constituted under section 4A of the DSPE Act.

15. Unfortunately after what transpired in the court on 1.2.2019 certain tweets were made by learned counsel appearing on behalf of Common Cause and another with respect to which the Attorney General has filed contempt petition as well as the Union of India. It was tweeted that the Minutes of the said meeting had been forged, the Court was misled and there had been no authorisation by the Committee constituted under section 4A about appointment of interim Director. As to the tweets made, the contempt petitions have been filed in which notice has been issued. Effect of the tweets during the pendency of the writ petition is the subject matter of the contempt petition and the same is to be considered in Contempt Petition (Crl.) Nos. 1 and 2 of 2019 as such we refrain to comment in the petition on the submission as to tweets. 11 16. It is clear from the resolution passed by the Committee on 9/10 th January, 2019 that the appointment of interim Director had been authorised by the Committee under section 4A. Thus, it cannot be said to be unauthorised and illegal in any manner whatsoever. The submission raised that the Selection Committee had not authorised the appointment of interim Director is fallacious on the face of the record and is misconceived in view of the

said resolution. We need not go into the larger question whether in such exigency it was necessary to have such a resolution for the appointment of Interim Director by Selection Committee as that does not arise for decision in this case as Committee has passed the aforesaid resolution.

17. With respect to RTI application that was filed by petitioner No.2, it had been replied on 19.12.2018 as follows : Please refer to your online RTI application bearing registration No.DOP&T/R/2018/56336 dated 5.12.2018 information under RTI Act, 2005.

2. It is informed that as per this Departments Executive Order No.230/14/99DSPE dated 8.7.2004 issued in pursuance of Honble Supreme Courts directions dated 20.4.2004 given in CA No.4303/2002, all the IPS officers of the senior most 4 batches in service on the date of retirement of the (incumbent) Director, CBI are needed to be considered for selection to the post of Director, CBI. It is further informed that as per Section 4(A)(1) of the DSPE Act, 1946, as amended by the Lokpal and Lokayuktas Act, 2013 (No.1 of 2014) (copy enclosed), the Central Government appoints the Director, CBI on the recommendation of the Committee consisting of members as prescribed for the purpose under the ibid section. 12 3. As per Section 19 of RTI Act, 2005, an appeal against the above decision would lie before the 1st Appellate Authority Ms. Ashwini Dattatraya Thakre, Deputy Secretary (AVDII), North Block, New Delhi within 30 days of receipt of this letter.

18. Petitioner had filed yet another application on 25.12.2018 in which it was prayed that what was the process being adopted by the Government to shortlist of the candidates, a copy of shortlisting prepared be disclosed, following reply was sent on 2.1.2019 : No.DOP&T/R/2018/56394 Please refer to your online RTI application bearing registration & DOP&T/R/2018/56397 dated 25.12.2018 information under RTI Act, 2005.

2. It is informed that as per this Departments Executive Order No.230/14/99DSPE dated 8.7.2004 issued in pursuance of Honble Supreme Courts directions dated 20.4.2004 given in CA No.4303/2002, amongst all the IPS officers of the senior most 4 batches in service on the date of retirement of the (incumbent) Director, CBI are needed to be considered for filling up the post of new Director, CBI. The

process of selection of new Director in CBI has not attained finality.

3. As per Section 19 of RTI Act, 2005, an appeal against the above decision would lie before the 1st Appellate Authority Ms. Ashwini Dattatraya Thakre, Deputy Secretary (AVDII), North Block, New Delhi within 30 days of receipt of this letter.

19. Petitioner No.2 was advised by the aforesaid communication in case she was aggrieved, to take recourse to appeal before the appellate authority under the RTI Act. It appears that the petitioner has not filed any appeal/s. In view of letters, we find no ground to interfere in the matter on the said ground too. 13 20. On the one hand the petitioner asked on 10.1.2019 for an appointment of regular Director and that meeting be convened at the earliest to appoint regular Director. We find that since the regular Director has been appointed the main prayer of the petitioner stands satisfied and there is absolutely no justification to continue with this writ petition in the aforesaid circumstances. In case the due process has not been followed in the appointment, it is always open to any incumbent, if so advised, to question the appointment in accordance with law but not in the routine manner and undue haste as shown in the petition.

21. Accordingly, we find no ground to interfere with this writ petition and the same is hereby dismissed. Parties are left to bear their own costs as incurred. ..J.

(Arun Mishra) New Delhi; February 19, 2019. J.

(Navin Sinha)

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