

Sanjiv Kumar Vs. Cbi

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Court : Delhi

Decided On : Apr-17-2012

Judge : The Honourable Ms. Justice Mukta Gupta

Appeal No. : Crl. M.C. No. 2839 OF 2011

Appellant : Sanjiv Kumar

Respondent : Cbi

Judgement :

1. By this petition the Petitioner challenges the order dated 23rd July, 2011 directing and framing charge against the Petitioner for offence punishable under Section 120B IPC read with Sections 420/467/468 and 471 IPC and Section 13

(2) read with Section 13

(1) (d) of the Prevention of Corruption Act, 1988 (in short PC Act) and also for substantive charge under Section 13

(2) read with Section 13

(1) (d) of the PC Act and Section 420 IPC.

2. The Petitioner who appears in person states that the list he took to the Honble Supreme Court was fake list and which he submitted to the government was a genuine list. The allegations as stated in the charge sheet are a statistical

impossibility and thus no charge can be framed against the Petitioner. There is no evidence that the Petitioner broke the seals and tampered with the list. Two witnesses have been trumped up against the Petitioner to allege that the Petitioner has manipulated the list. It is alleged that the Petitioner called other members at Punjab Bhawan. However, the rooms were arranged as per the directions of the Chief Minister. No investigation has been done by the CBI in this regard. The charge sheet is based on the petition of the Petitioner before the Honble Supreme Court exposing the scam. The charge has been framed against the Petitioner on the basis of CBIs contention of band, width, caste and category wise formula which the Petitioner had conclusively proved before the learned Trial Court that the formula of band, width, caste and category wise formula prepared by the CBI relating to the Supreme Court list is statistical impossibility and a mathematical absurdity. Thus undergoing the trial would be an exercise in futility. It is contended that the Petitioner was the person who exposed the scam and the Honble supreme Court directed that the statement of the Petitioner should be recorded forthwith by the CBI however, in view of the fact that the CBI has made the Petitioner an accused it has been ensured that the original statement of the Petitioner will not be read out in the trial. Thus the impugned order be set aside.

3. Learned counsel for the CBI on the other hand contends that the present case relates to the selection of 3206 Junior Basic Teachers in December, 1999 and January, 2000 by district level bodies. The list was directed to be sent to the Director of Primary Education at Haryana, Chandigarh. On 24th April, 2000 the then Director was transferred and Ms. Rajni Sekhri Sibal took over the charge. The then Chief Minister wanted the list to be replaced by the then Director. Since Ms. Rajni Sibal did not succumb to the pressure, the Petitioner was brought on the said position. The keys of the almirah where the sealed lists were kept were handed over to the Petitioner. There are statements of the witnesses which show that the manipulation in the list was done at the instance of the Petitioner. The scope of interference in the present petition is limited in view of the decision of the Division Bench of this Court in Anur Kumar Jain vs. CBI, 178 (2011) DLT 501.

4. I have heard learned counsel for the parties.

5. Briefly the case of the prosecution is that the Hon?ble Supreme Court in Writ Petition (Crl.) No. 93/2003 Sanjiv Kumar vs. State of Haryana directed the CBI to inquire/investigate into the alleged irregularities concerning appointment of Junior Basic Trained Teachers (in short „JBT Teachers?) by the Government of Haryana in the year 1999-2000. After conducting the preliminary inquiry RC-3 (A)/2004/ACU-IX dated 24th May, 2004 was registered under Section 120B read with Sections 420/467/468/471 IPC and 13 (2) read with 13 (1) of the PC Act against Vidya Dhar, IAS, the then officer on special duty (OSD) to the Chief Minister of Haryana and others. As per the allegations in the charge sheet pursuant to the selection process of 3206 JBT teachers in Haryana interview for the post were conducted w.e.f. 1st December, 1999. District wise award list of candidates containing roll numbers, name and parentage, date of birth, education marks/ interview mark and grand total marks were received between December, 1999 and January, 2000 by the Directorate of Primary Education, Haryana. The result of these 3206 JBT Teachers was declared on 7th December, 2000 on the basis of manipulated interview list. As per the charge sheet two sets of interview mark list of the candidates were in existence, wherein the marks of the candidates in interview were different, which had a crucial bearing for qualifying for appointment. Both these sets of list had been signed by the Chairperson and the two members of the District Level Selection Committee for the 18 districts. On the basis of one set of list issued by the Petitioner on 16th September, 2000 appointments of 3206 JBT Teachers were made who have since joined. The Petitioner herein in Writ Petition (Crl.) 93/2003 filed by him before the Hon?ble Supreme Court produced the other set of list purportedly prepared at the instance of Vidya Dhar the then OSD to the then Chief Minister, Haryana, Sher Singh Badshami, the then Political Advisor to the Chief Minister, Haryana and others. The claim of the Petitioner is that he had declared the list on the basis of genuine mark list of 18 districts prepared sometime in the month of December, 1999 and not on the basis of duplicate/false interview mark list got prepared in the month of September, 2000. During investigations it was revealed that till 1999, recruitment of JBT Teachers was being conducted by Haryana Staff Selection Commission Chandigarh. The then Chief Minister, Haryana who was holding the portfolio of Education Minister, Haryana in September, 1999 took the decision to take away

the JBT Teachers?recruitment from the purview of Haryana Staff Selection Commission and entrust the same to the Directorate of Primary Education, Haryana. Investigation has revealed that another meeting of Cabinet Ministers, Haryana chaired by the then Chief Minister took place on 10th November, 1999 which was also attended by the OSD and Political Advisor to the Chief Minister wherein important decisions relating to the criteria for selection of JBT Teachers were taken. It was decided that each District Level Selection Committee would comprise of District Primary Education Officer, Deputy District Education Officer and one Block Education Officer. It was also decided that after the interview, the award list would be collected from all districts and the Directorate of Primary Education shall prepare a State Level merit list. Pursuant thereto the interviews for these posts were conducted during December, 1999 to January, 2000 in 18 districts of Haryana, that is, Ambala, Bhiwani, Faridabad, Fatehabad, Gurgaon, Jhajjar, JInd, Karnal, Kurukshetra, Kaithal, Narnaul, Panipat, Panchkula, Rohtak, Rewari, Sirsa, Sonapat and Yamunanagar. The instructions were given to the District Primary Education Officers of Haryana pertaining to conducting of interviews and preparation of mark list. It was also instructed that interview list of the candidate would be prepared on caste and category wise. 7707 applications were received in total against 3206 vacant positions for which interviews were conducted by the Selection Committee for the 18 districts during the period December, 1999 and January, 2000. The award lists in sealed covers were prepared and sent to the office of the Directorate of Primary Education, Chandigarh, Haryana and kept safely in the almirah in the office chamber of the then Director of Primary Education, Haryana. Investigations have revealed that Smt. Rajni Sekhri Sibal, IAS took charge as Director, Primary Education, Haryana from Shri R.P. Chander on 27th April, 2000 and the latter handed over the keys of the almirah kept in the office chamber of the Director, Primary Education, Haryana containing the award lists of interviews of JBT Teachers received from 18 districts in sealed covers to Mohan Lal Gupta, P.A. Smt. Rajni Sekhri Sibal was called for two meetings and was pressurized to replace the interview list which she refused. Thereafter she was transferred from Directorate of Primary Education on 25th May, 2000. Smt. Rajni Sekhri Sibal sealed the steel almirah in her chamber containing award lists of interviews of JBT Teachers in sealed envelopes received

from 18 districts Primary Education Offices to ensure that no tampering takes place by rapping four meter of cloth around the almirah. She had even proposed to form a Committee for compilation and preparation of results of JBT teachers by Haryana State Electronics Development Corporation Limited (HARTRON), Chandigarh. Since Mrs. Sibal had proposed to constitute a Committee and did not succumb to the pressure, she was transferred and the Petitioner herein was brought as Director of Primary Education, Haryana on 11th July, 2000 with the approval of the then Chief Minister, Haryana. The Petitioner took over this additional charge while holding the substantive charge of Special Project Director, Haryana Prathmik Shiksha Pariyojna Parishad. The investigations revealed that the Petitioner was in touch with the son of the then Chief Minister and the call details in this regard were collected. The Petitioner changed the members of the Result Compilation Committee as proposed by Smt. Rajni Sekhri Sibal with the approval of the then Chief Minister. The Committee which finally compiled the result comprised of Mr. R.G. Nagpal, Mr. Ravinder Sharma, Mr. Sant Lal, Smt. Daya Saini, Mr. Mukesh Bajaj and Mr. M.R. Sharma. The Petitioner got the original list removed by his staff in August 2000. Manipulation of lists was done at Prerna Guest House located at 40, Sector-6, Panchkula was taken. The statements of Mohan Lal Gupta, PA and Sardara Singh, Office Superintendent have been recorded who were directed to review these lists and see how many Scheduled Caste and Backward Class candidates have been selected out of the general category. However, they failed to do the assigned work and the interview mark lists were handed over back to the Petitioner. The Petitioner organized a number of meetings with some District Level Selection Committee members who changed the list. It was revealed that the Petitioner asked the members to prepare a second list and dictated the roll number and interview marks of the candidates. As per the formula given by the Petitioner the General Category candidates whose names were in the list provided by the Petitioner were to be given interview marks between 17 to 19 and others were to be given marks between 5 to 7. Similarly, for the backward class, the candidates whose names were mentioned in "the list of favoured candidates" provided by the Petitioner were to be given interview marks in the range of 6 to 8 and rest were to be given 2 to 5 out of 20. Thus the Chairperson and the members of the District Level Selection Committees on

instructions from the Petitioner prepared the false interview mark list for recruitment of JBT Teachers. As per the direction of the Petitioner all the Committee members assembled on 16th September, 2000 in his office where sealed almirah containing the interview mark list was kept. The GEQD, Chandigarh opined that the words "TATHA ISKI VIDEO FILM BANAI GAI" have been added later along with one more sentence in the last para of this memo, that is, "YAH SABHI SADASYA UPROKT ANUSAR HARTRON MAI COMPUTER KE MADHYAM SAI NIYAMANUSAR PURNA SATARKA AVEM GOPNIYATA SAI TURANT PARINAM TAIYYAR KARENGE". Thus the fact of opening the almirah on 16th September, 2000 was a farce and the interview mark list of 18 districts earlier kept in sealed envelopes in the almirah were removed by the Petitioner even before 1st September, 2000 and replaced with the fraudulent list prepared in the month of September, 2000.

6. The Chairperson and members of Committee of the District Level Selection Committee, Haryana filed their affidavit to their departments in the month of June, 2003 in connection with W.P. (Crl.) 93/2003 Sanjiv Kumar vs. State of Haryana and others wherein they stated that the interview mark list for recruitment of JBT teachers was prepared some time in September, 2000 as per the instructions of the Petitioner. From the investigation it was revealed that the list which was implemented and on the basis of which appointments were given was the fraudulent and illegally prepared list and the one given to the Hon'ble Supreme Court and provided to the Investigating officer during investigation was the original one prepared in the month of December, 1999. The Petitioner did not submit before the Hon'ble Supreme Court the list relating to District Kaithal, Kurukshetra, Panipat and subsequently supplied part list of districts Kaithal and Kurukshetra.

7. Thus a perusal of the allegations as set out in the charge-sheet show that the Petitioner was actively involved in the alleged offence. Whether the formula applied by the CBI is a mathematical absurdity or not will be seen during the trial. At this stage it is sufficient to note that the evidence collected by the prosecution prima facie raises a strong suspicion on the Petitioner having committed the offence for which he has been charged. None of the grounds raised by the Petitioner show that the order on charge or framing of charge against the

Petitioner is an abuse of process of Court warranting interference of this Court in the present petition.

8. Petition is dismissed.

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