IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

MAT 909 of 2023
with
IA No.: CAN 1 of 2023

State of West Bengal
versus
Soumen Nandy & Others

For the Appellant/State	:	*Mr. Kalyan Kumar Bandopadhyay, Sr. Adv.,* *Mr. Jaydip Kar, Sr. Adv.,* *Mr. Sirsanya Bandopadhyay,* *Mr. Arka Kumar Nag.*
For the Respondent/ Writ Petitioner	:	*Mr. Bikash Ranjan Bhattacharyya,* *Mr. Firdous Samim,* *Ms. Gopa Biswas,* *Ms. Mousumi Hazra,* *Ms. Payel Shome,* *Ms. Purba Mukherjee,* *Ms. Sampriti Saha.*
For the E.D.	:	*Mr. Dhiraj Trivedi,* *Mr. Samrat Goswami.*
For the CBI	:	*Mr. Billwadal Bhattacharya,* *Mr. Amajit De,* *Mr. Arijit Majumdar.*
Hearing is concluded on	:	*12th June, 2023.*
Judgment On	**:**	**15th June, 2023.**

Tapabrata Chakraborty, J.

1. A legal tussle has spiraled up to this Court seeking a quietus to the primary issue as to whether the learned Single Judge had the jurisdiction to direct the Central Bureau of Investigation (in short, CBI) to carry on investigation in the municipality recruitment scam while considering an application being CAN 2 of 2023 filed by the Enforcement Directorate (in short, ED) in connection with a writ petition preferred alleging illegalities perpetrated in a selection process conducted for appointment to the posts of teachers in primary schools and in which the Department of Urban Development and Municipal Affairs was not even arrayed as a party respondent.

2. The case has a chequered history. The writ petition being W.P.A. 9979 of 2022 was affirmed in the month of June, 2022 alleging *inter alia* that many candidates who did not even pass the Teacher Eligibility Test (in short, TET) were appointed as assistant teachers in several primary schools. By an order dated 13th June, 2022, the Writ Court directed CBI investigation. In an appeal preferred against the said order, the Hon'ble Division Bench delivered a judgment on 2nd September, 2022 observing *inter alia* that the forensic investigation directed to be handled by the CBI deserves no interference and that the Hon'ble Single Bench shall also be entitled to monitor investigation into any money trail, as considered necessary. Challenging the said judgment dated 2nd September, 2022, a Special Leave Petition (in short, SLP) was filed which was heard along with other similar matters and an order was passed on 18th October, 2022

directing *inter alia* that CBI shall continue their investigation as directed by the learned Single Judge and file a comprehensive report before the Court. The Hon'ble Supreme Court, however, stayed the order passed by the learned Single Judge directing cancellation of appointment of 269 candidates and the order directing removal of one Dr. Manik Bhattacharya, the President of the West Bengal Board of Primary Education (in short, the Board). Thereafter, the CBI investigation has continued. In the midst thereof, ED filed an application being CAN 2 of 2023 in the pending writ petition averring *inter alia* that during investigation in respect of primary teachers' recruitment scam under the Prevention of Money-Laundering Act, 2002 (in short, PMLA) searches were carried out at various premises and incriminating documents along with digital evidences were recovered from one Sri Ayan Sil and the said documents revealed that the scam is not limited to recruitment of teachers but also covered several other appointments made by various municipalities. Considering the said application the learned Single Judge passed the order dated 21st April, 2023 directing CBI to carry on investigation in the municipality recruitment scam and to file a report before the Court. Aggrieved by the said order the State of West Bengal preferred a SLP which was disposed of by an order dated 28th April, 2023 permitting the State of West Bengal to move a petition by way of review before the Hon'ble High Court. Pursuant to such direction a review application being RVW No.83 of 2023 was filed but the same was dismissed by a judgment dated 12th May, 2023 delivered by the learned Single Judge to whom the matter was assigned.

3. Mr. Kalyan Bandopadhyay, learned senior advocate appearing for the appellant, placing reliance upon a judgment delivered in the case of *DSR Steel (Private) Limited –vs- State of Rajasthan and Others*, reported in *(2012) 6 SCC 782*, submits that when an order under review is not interfered with and the review petition is dismissed no question of any merger arises and person aggrieved by the order impugned in review shall have to challenge the same and not the order dismissing the review petition. In the present case, the review petition has been dismissed affirming the order dated 21st April, 2023 and as such the appellant has challenged the parent order dated 21st April, 2023 in the present appeal and that as such there can be no bar as regards maintainability of the present appeal.

4. He argues that as a rule, relief not founded on the pleadings should not be granted. There is no pleading to the effect that the selection process towards recruitment in any municipality was sham or that the respondents have acted *mala fide*. The writ petitioner also did not plead any bias or favouritism. On the basis of such pleadings the learned Judge could not have passed the order impugned.

5. He contends that the entire challenge in the writ petition was against the recruitment process of primary teachers and accordingly the writ petition was consciously filed under Group-II. The writ petition was not filed under Group-V or under Group-IX and the learned Judge had no determination to pass order in connection with any matter relating to municipality. Any order passed by the learned Court in a matter that has not been placed before the said Bench by the Hon'ble the Chief Justice is

without jurisdiction and is a nullity and any order passed or action taken pursuant thereto, or in furtherance thereof would also be nullities. As such, the direction towards CBI investigation in municipality recruitment scam passed by the learned Single Judge while considering an education matter is a nullity and the FIR registered by the CBI on 22nd April, 2023 is also void. In support of such contention reliance has been placed upon the judgments delivered in the cases of *Sohan Lal Baid –vs- State of West Bengal and others*, reported in *1989 SCC OnLine Cal 224, State of Rajasthan –vs- Prakash Chand and Others*, reported in *(1998) 1 SCC 1 and Dwarka Prasad Agarwal (D) By Lrs. –vs- B.D. Agarwal and Others*, reported in *(2003) 6 SCC 230*.

6. He argues that the status report on the investigation conducted in primary teachers' recruitment scam in ECIR/KLJO-II 19/2022 dated 24th June, 2022 was shared by ED with CBI Headquarters under the provisions of Section 66(2) of PMLA. Such fact has weighed with the learned Single Judge in issuing directions towards CBI investigation in respect of recruitment in municipalities. A perusal of the provisions of Section 66(2) would reveal that ED ought to have shared such information with the concerned agency being the State police. Law and order being a subject matter of the State under list-II, schedule-VII of the Constitution, the Court ought not to have directed CBI to investigate circumventing the State investigating agency.

7. According to Mr. Bandopadhyay no reason is forthcoming as to why the report under Section 66(2) of PMLA was not shared with the State police

and as to why the ED directly approached the Writ Court seeking appropriate direction upon CBI in terms of the ECIR dated 24th June, 2022. The onus of launching an investigation in respect of offences under the Indian Penal Code is upon the State police. Judicial intervention in exercise of writ jurisdiction is warranted on account of obstructions to the investigation process such as material threats to witnesses, the destruction of evidence or undue pressure from powerful interests. It is only in such circumstances the Writ Court can play a corrective role to ensure that the integrity of the investigation is not compromised. ED filed the application though it was not even arrayed as a party respondent to the writ petition and in such circumstances it was not viable for a Writ Court to order the initiation of an investigation. Surprisingly, in the present case even before commencement of such investigation, the Writ Court has been approached by the ED so that such investigation may be initiated by CBI. From such sequence it is explicit that with the sole intent was to side track the State police. In support of such contention reliance has been placed upon the judgment delivered in the case of *Kunga Nima Lepcha and Others –vs- State of Sikkim and Others*, reported in *(2010) 4 SCC 513*.

8. In the application filed by the ED allegations have been levelled against the Department of Urban Development and Municipal Affairs but the said department was not even a party to the writ petition and did not even get an opportunity to meet the allegations contained in the application filed by ED. From such sequence it is explicit that the direction for investigation

to CBI in respect of municipality matters is also violative of the principles of natural justice.

9. Mr. Bandopadhyay strenuously argues that neither the accused nor the complainant or informant is entitled to choose their own investigating agency. In the present case, where ED was not even a party, an application was filed at its instance and an order was obtained from the Writ Court upon CBI to investigate in respect of recruitment in municipality which was not even the subject matter of the main writ petition. Mere complaints cannot be converted into *suo moto* proceedings for setting the criminal law in motion. In support of such contention reliance has been placed upon the judgment delivered in the case of *Divine Retreat Centre –vs- State of Kerala and Others*, reported in *(2008) 3 SCC 542*.

10. He further argues that the sequence of facts would reveal that ED had quick-witted the learned Court in obtaining a direction towards investigation in respect of recruitment in municipalities. Without coming to a definite conclusion that the materials disclose a *prima facie* case calling for an investigation, the learned Court passed such direction abruptly on the very date the application was filed without noting that on the said date there was a resolution adopted by the three wings of the Bar at the High Court that no adverse and/or *ex parte* order shall be passed on the said date. On the very next date CBI in a hasty manner registered RC0102023A0005 dated 22.04.2023 under section 420/476/468/471/120B/34 of IPC and sections 12/13(2)/7/7A/8 of PC Act and the officials of the municipalities and the Government officials may be arrested any time and such threat

perception affects their fundamental right. In support of such contention reliance has been placed upon the judgment delivered in the case of *Secretary, Minor Irrigation & Rural Engineering Services, U.P. and Others –vs- Sahngoo Ram Arya and Another*, reported in *(2002) 5 SCC 521*.

11. According to Mr. Bandopadhyay though there is no absolute bar towards issuance of direction for investigation by the CBI in exercise of the powers of Articles 32 and 226 but such extraordinary power is required to be exercised sparingly, cautiously and in exceptional situation for the purpose of doing complete justice. The order dated 21st April, 2023, does not contain any reason for directing CBI to investigate in respect of recruitment in municipalities when such issue was not even subject matter of the writ petition. In support of such contention reliance has been placed upon the judgments delivered in the cases of *State of West Bengal and Others –vs- Sampat Lal and Others*, reported in *(1985) 1 SCC 317* and *State of West Bengal and Others –vs- Committee for Protection of Democratic Rights, West Bengal and Others*, reported in *(2010) 3 SCC 571*.

12. He argues that the Hon'ble Supreme Court by order dated 28th April, 2023 permitted the appellant to move a petition by way of review and directed *inter alia* that the Court would hear the State of West Bengal afresh on the issue as to whether the investigation should be initiated by the CBI. The assignee Court, however, went on to supplement reasons to the parent order dated 21st April, 2023 and dismissed the review application without considering the grounds of review.

13. He contends had it been a case that incriminating materials were found in respect of municipality recruitment scam intermingled with the materials pertaining to teachers' appointment scam there would not have been any necessity towards registration of any second FIR and as such no reason is forthcoming as to why a fresh FIR was registered by CBI. It is well-settled that there can be no second FIR where the information concerns the same cognizable offence alleged in the first FIR. In support of such contention reliance has been placed upon the judgment delivered in the case of *Arnab Ranjan Goswami –vs- Union of India and Others*, reported in *2020 (14) SCC 12*.

14. In course of hearing it was brought to the notice of this Court that the appellant had preferred SLP against an order dated 22nd May, 2023 passed by a co-ordinate Bench of this Court in the present appeal, however, Mr. Bandopadhyay informs that steps have already been taken to withdraw the said SLP and that as such the present appeal may be finally heard.

15. Mr. Bikash Bhattacharyya, learned senior advocate appearing for the writ petitioner/respondent submits that in the order dated 18th October, 2022 passed in SLP Nos.16325-16326 of 2022, it was directed that CBI shall take no coercive steps against the petitioner, namely, Dr. Manik Bhattacharya. Subsequent thereto, ED arrested him and as such he preferred an application seeking a declaration that his arrest was illegal. It was argued on behalf of the ED that it had initiated an independent investigation into money-laundering allegations based on the Enforcement Case Information Report under no. KLZO-II/19/2022 (ECIR). Considering

the arguments advanced, the Hon'ble Supreme Court in its order dated 20th October, 2022 observed that *'we cannot hold the arrest of the petitioner by the Enforcement Directorate illegal as the issue of money-laundering or there being proceeds of crime had not surfaced before the Single Judge or the Division Bench of the High Court'*. It was further observed that money-laundering is an independent offence and a general protective order directed at CBI cannot insulate the petitioner from any coercive action in a different proceeding by ED even if there are factual similarities vis-à-vis the allegations.

16. He argues that ED has the jurisdiction to initiate proceedings under PMLA. In course of such investigation it was found that contracts pertaining to various municipalities and District Primary School Councils were given to a single company, namely, M/s. ABS Infozon Private Limited for the printing of question papers, printing of OMR sheets, evaluation of marks and preparation of merit list and one Mr. Ayan Sil is a director of the said company and he along with other high functionaries including public servants and political leaders had hatched up a criminal conspiracy. Ayan Sil was arrested and in course of interrogation it was revealed that an amount of more than Rs.200 crores have been collected from the candidates for giving them illegal appointment in various municipalities in West Bengal. ED being the competent authority brought such facts to the notice of the learned Single Judge so that appropriate directions can be issued. Upon considering such facts the Court thought it fit and proper to direct the

predicate agency to register FIR for investigation in municipality recruitment scam.

17. Mr. Bhattacharyya further argues that the entire scam involves appointment of teachers as well as municipality employees and as the incriminating materials pertaining to such scam are inextricably bound, such investigation cannot be compartmentalised and/or segregated in respect of school department and municipality.

18. Mr. Trivedi, learned advocate appearing for ED submits that grounds taken in the present appeal are similar to the grounds taken in the review application as well as in the SLP initially preferred by the appellant challenging the order dated 21st April, 2023. The SLP having been disposed of permitting the appellant to file a review application, the grounds taken in SLP could not have been re-agitated by the appellant in the present appeal.

19. He categorically denies that ED was not a party in the writ petition. Drawing our attention to an order dated 14th December, 2022 passed in a series of writ petitions, Mr. Trivedi submits that taking note of the nature of allegations the learned Court observed that ED shall be made party in respect of other applications also where CBI has been made a party. Such direction had admittedly not been challenged by the appellant. In view thereof, it cannot be alleged that ED was not a party to the proceedings. ED was arrayed as a party respondent in the SLP itself filed by the appellant. In the said conspectus it cannot be stated that ED was a stranger to the proceedings.

20. Drawing our attention to the averments made in the application being CAN 2 of 2023 and the status report in ECIR/KLJO-II/19/2022 dated 24th June, 2022, Mr. Trivedi argues that in course of investigation in respect of primary teachers' recruitment scam under PMLA searches were carried out at various premises and several incriminating documents along with digital evidences were recovered and seized from the possession of Sri Ayan Sil which clearly revealed that the scam is not only limited to recruitment of teachers but also covers several appointments by various municipalities in different posts. The proceeds of crime of teachers' recruitment scam and the municipality recruitment scam have got intermingled on account of common agents like Sri Ayan Sil and common beneficiaries and in both the cases the victim is the public at large. It is not a case that the Writ Court directed CBI to carry on investigation in municipality recruitment scam at the drop of a hat and such direction does not suffer from any infirmity. In support of such contention reliance has been placed upon the judgment delivered in the case of *Narmada Bai –vs- State of Gujarat and Others*, reported in *2011(5) SCC 79* and an unreported judgment delivered in the case of *Usuf Ali Sheikh –vs- The State of West Bengal and Others*.

21. According to him, the argument of Mr. Bandopadhyay that in terms of Section 66(2) of PMLA the information ought to have been shared by ED with State police is fallacious. In course of investigation the predicate agency being CBI lodged its first FIR on 9th June, 2022 and such investigation was continuing in terms of the order earlier passed in the SLPs. Since common agents and common beneficiaries were involved in the

alleged offences ED shared such information with CBI and there was no infirmity in such act.

22. Mr. Billwadal Bhattacharyya, learned advocate appearing for CBI submits that the Writ Court in exercise of its jurisdiction under Article 226 can direct CBI to investigate cognizable offences within the territory of a State even without its consent. Considering the nature of allegations, the incriminating materials on record, the gravity of the offences alleged and the involvement of very influential persons including Ministers indicated proof of inability of holding fair and impartial investigation by the State police and accordingly CBI investigation was directed and there is no infirmity in such direction. The order passed does not entail any civil consequence upon the State. Furthermore, it is an obligation of the State to act in a fair and impartial manner and to extend all cooperation so that the truth unfolds. In support of such contention reliance has been placed upon the judgments delivered in the cases of *State of Maharashtra –vs- Farook Mohammed Kasim Mapkar and Others*, reported in *2010(8) SCC 582* and *E. Sivakumar –vs- Union of India and Others*, reported in *2018(7) SCC 365.*

23. In reply, Mr. Bandopadhyay submits that the judgments upon which reliance has been placed by ED and CBI are distinguishable on facts. He reiterates that ED is not a party to the proceeding and in view of the order dated 14th December, 2022 ED does not automatically become a party in the writ petition from which the present appeal arises. In spite of being aware that the Court is in *seisin* of the matter the CBI has registered the FIR and had conducted raid and such acts disclose the least regard of CBI

towards the Court. As it had been the stand of the respondents that the proceeds of crime of teachers' recruitment scam and the alleged municipality recruitment scam have got intermingled the learned Court could not have proceeded on the basis that the alleged scam in the municipalities was an independent offence. The second FIR lodged by CBI is thus not sustainable.

24. Heard the learned advocates appearing for the respective parties and considered the materials on record.

25. In view of disposal of the SLP granting an interim order and permitting the petitioner to move a petition by way of review before the High Court with an observation that *'in the interest of justice, we are of the view that it would be appropriate if the State of West Bengal is heard afresh by the High Court on the issue as to whether the investigation should be initiated by the CBI'*, the appellant may not be debarred a hearing on merit moreso when the assignee Court had dismissed the review.

26. Corruption is a reprehensible crime in a society and it is an assault on the faith of the common people upon officers and Ministers and people's representatives. It defiles and degrades and shakes the confidence of the people at large upon the Government. It causes psychological harm to the society at large leaving upon it indelible marks. The allegations in the instant case are neither skirmishes nor bald, but speak of overt acts indicating complicity among the Ministers and high placed government officials. During investigation a mammoth amount of Rs. 111 crores and

gold and jewellery valued at Rs. 5.08 crores had already been seized and attached. The judgments in the cases of *Sohan Lal Baid (supra), State of Rajasthan (supra), Dwarka Prasad Agarwal (D) By Lrs. (supra), Kunga Nima Lepcha and Others (supra) and Secretary, Minor Irrigation & Rural Engineering Services, U.P. and Others (supra)* have not been delivered in the backdrop of any scam revealing a money trail of crores and involvement of high officials. The jurisdiction needs to be considered with reference to value, place and nature of the subject matter. It is well known that a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgments delivered in the case of *Sampat Lal and Others (supra)* and *Divine Retreat Centre –vs- State of Kerala and Others* were taken into consideration by the Hon'ble Supreme Court in the SLP preferred in connection with the present writ petition and the direction upon CBI to investigate was not stalled.

27. Department of Urban Development and Municipal Affairs and School Education Department are departments under the State Government. State Government itself was impleaded as a party respondent in the appeal. Aggrieved by the order dated 21st April, 2023, State Government did not approach the Hon'ble Division Bench and filed SLP before the Hon'ble Supreme Court. ED is the sole competent authority to initiate proceedings under PMLA and in the SLPs the direction upon CBI to continue with the investigation was not interfered with.

28. The status report filed by ED along with its application being CAN 2 of 2023 in connection with WPA 9979 of 2022, paints a rather disquieting

picture. The contents of the report reveal that the alleged perpetrators of corruption in the recruitment of primary school teachers have concocted a larger nefarious scheme of manipulating the recruitment process across various municipalities in the State of West Bengal. Admittedly, such details were unearthed by ED during the course of their investigation into the offence of money laundering in connection with the illegal recruitment of primary school teachers. Thus, ED's investigation in relation to a particular instance of criminal offending, has led to the discovery of a similar form of malpractice involving common agents of corruption. In other words, there is ample indication to suggest that these two instances of crime are bound by a common thread and together, they form a larger body of crime associated with recruitment in various government bodies and/or institutions.

29. The discovery of corruption in recruitment by municipalities is unmistakably traced to the ongoing investigations into the teachers' recruitment scam. Therefore, given the similar nature of offence and involvement of common perpetrators, the learned Single Judge's direction of CBI inquiry, into the alleged irregularities pertaining to appointments by municipalities, would ensure a logical conclusion to the ongoing investigations and serve the interest of justice. State itself had impleaded ED as a party respondent in the present appeal, in the SLP and also in the review application and as such it was within its knowledge that ED had been directed to be a party in respect of all applications where CBI had been impleaded.

30. A scam is a term that describes any fraudulent business or scheme that takes money or other goods from an unsuspecting person. It is a dishonest way to make money or to get an advantage by deceiving people. The writ petition was filed disclosing illegalities perpetrated in selection of teachers and in course of such investigation, directed to be continued by the Hon'ble Supreme Court, a money trail was noticed involving a company which was awarded a contract pertaining to various municipalities and School Councils for printing of question papers, printing of OMR sheets. In the present case, the subject matter is a scam of extraordinary dimension and the money trail and exchange of monetary considerations for giving appointments have extended to selection process of education as well as municipality. Such investigation cannot be scuttled on a purported plea that the learned Court had no jurisdiction to direct CBI investigation in recruitment of municipality since it was having determination over Group-II matters. The wide language of Article 226 of the Indian Constitution has conferred upon High Courts, ample power to reach injustice wherever found. Instead of being astute to discover reasons for not applying the constitutional remedy, the same needs to be applied in every case to which, by any reasonable construction, it can be made applicable. It is our considered view overly technical arguments of procedural incongruity must be cast aside. In other words, a reticent approach by the Court for the purpose of satisfying every subtlety of interpretation ought to be discouraged. In the present case, the menace of corruption has accorded the undeserved with an unfair advantage over the deserved and deepened the

societal chasm between haves and have-nots. This in turn, has precipitated widespread dejection and disillusionment among general masses. The collective suffering of those who have been wronged by the malevolent activities of morally debased individuals, necessitates urgency in action. An uninterrupted and conclusive investigation into the connected schemes of corruption is the only means by which the perpetrators can be brought to justice.

31. For the reasons discussed above we are not inclined to interfere with the order impugned dated 21st April, 2023.

32. The appeal and the connected application are, accordingly, dismissed.

33. There shall, however, be no order as to costs.

34. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.) **(Tapabrata Chakraborty, J.)**