

HIGH COURT OF MADHYA PRADESH : JABALPUR

BEFORE HON'BLE SHRI JUSTICE SANJAY YADAV

Writ Petition No.20003/2014

Krishna Kumar Mishra
versus
Union of India and others

Petitioner-in-person.

Shri J.K. Jain, learned Assistant Solicitor General for
respondent-Union of India.

Shri Ajay Pratap Singh, learned Government Advocate for
the respondent-State of M.P. and its functionaries.

ORDER
(26.5.2017)

Being aggrieved of the alleged unfair treatment meted
out to the petitioner while employed as Scientific Assistant/D
in Raja Ramanna Centre for Advanced Technology,
Department of Atomic Energy, Govt. of India at Indore which,
as alleged, led him to tender resignation on 21.7.2004 which
was accepted vide office order-dated 9.9.2004, the petitioner
has filed this petition seeking multifarious reliefs, viz :

(i) to direct respondents to produce the entire record relating to petitioner for kind perusal of this Hon'ble Court.

(ii) to direct respondent No.3 to initiate the CBI enquiry into the matters raised by the petitioner (especially in case of mysterious theft/ disappearance of petitioner's Lock-in-amplifier, interception of telephones/e-mails/postal letters/ bugging of domestic conversation of the petitioner, suicide of Lt. Shri Thirumal, suicide of Lt. Attar Singh, suicide of Shri Rajesh Topno and other financial irregularities prevailing in the RRCAT, Indore) in the interest of justice.

(iii) to direct respondent No.2 and respondent No.9 to pay full compensation (salary+other full allowances etc) to petitioner for 10 years (since 9.9.2004 to till date) as the petitioner was forced indirectly to resign due to sequence of conspiracies at RRCAT Indore against him organized by respondents No.9, 10 and 12 and even after leaving RRCAT Indore these respondents did not allow him to work anywhere

else indirectly. And, this Hon'ble Court may kindly be pleased to direct respondent No.2 to take back the petitioner in his previous job (as regards other conditions which are applicable to the petitioner if permitted he will be having full rights all conditions applicable to him and will be treated as he has not resigned i.e. continuity in service for the purpose of promotion leave etc) and get posted at BARC Mumbai in appropriate group keeping in view his research work experience (if Hon'ble Court may deem fit, as the petitioner is very scared in joining at RRCAT Indore keeping in view his past experience). Here, Hon'ble Court may consider the fact that going back into the previous job as junior researcher in CAE-GOI is not a condition at all from the petitioner's side, it is upto Hon'ble Court only if it finds reasonable and thinks that it is in the interest of DAE as well as in the interest of petitioner, keeping in view the excellent contribution made by petitioner in the field of Laser-based Fusion Programme of the Nation.

(iv) to direct GOI for the technical audit of various projects of the RRACT Indore which have been taken up since last 10 years and also to make provisions for such regular technical audits of various scientific projects of RRCAT, Indore.

(v) to direct the GOI to remove the respondent No.9 from the post of Director RRCAT from immediate effect so that may more lives and careers may be saved of the juniors/ subordinates in RRCAT Indore and also to direct for the case study upon respondent No.9 in some highly reputed organization like Indian Institute of Management, as he is really peculiar personality he enjoy harassing his opposing sub-ordinates and can go up to any limits (even by fabricating false/fake stories/cases and evidence).

(vi) Any other relief which this Hon'ble Court may deem fit and proper on the basis of above mentioned facts and grounds of the case.

2. To start with, Relief No.(iii) is taken up first as the same relates to petitioner's resignation which he tendered on 21.7.2004 and was accepted on 9.9.2004. The relief which

centres around and relates to petitioner's resignation from service, this Court finds sufficient force in the contention raised by the respondent as to maintainability of the petition. That, being a Central Govt. Employee and the Relief No.(iii) relates to service matter under Section 2(q) of the Administrative Tribunals Act, 1985 and the bar created vide Section 28 of 1985 Act and the decision in **L. Chandra Kumar vs U.O.I AIR 1997 SC 1125** wherein it is held :

99. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by

Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.

(Emphasis supplied)

- this Court refrain from entertaining the writ petition so far as it relates to the issue relating to petitioner's service.

3. Coming to the Relief No.(v); whereby, the petitioner seeks removal of respondent No.9, it is informed that said officer has retired. In view whereof, relief sought to remove

respondent No.9 cannot be granted. As to direction for case study of respondent No.9 by some highly reputed organization like Indian Institute of Management, the petitioner since fails to establish a legal right in him to seek a mandamus for a case study of an individual, the relief cannot be granted in a writ petition under Article 226 of the Constitution of India. Furthermore, the nature of relief sought against respondent No.9 without any statutory foundation, if granted, would tantamount to a breach of personal liberty of the respondent No.9 which will violative of Article 21 of the Constitution of India.

4. In respect of relief sought for direction to Govt. of India for technical audit of various projects of the RRCAT Indore and also to make provisions for such regular technical audits of various scientific projects of RRCAT Indore. Though many an allegations have been made by drawing inferences but there is no cogent material on record, except a paper clipping at Page 650 which cannot be taken to have any evidentiary value, to substantiate the contention that there is no internal auditing in the organization like RRCAT. Respondents No.1, 2 and 9 to 12 in Paragraph 39 and 40 of the counter affidavit

filed on 15.6.2015 has categorically countered the contention on behalf of petitioner stating :

"39. The petitioner is making wild allegations on the efficiency and achievements of the organization without any substantiation and is casting aspersions on the scientific community of the answering respondents Department. He is put to strict proof of the same. The Raja Ramanna Centre for Advanced Technology (RRCAT), Indore was founded in 1984 by the Department of Atomic Energy (DAE) for pursuit of R&D in the areas of Accelerators, Lasers and related technologies. Since then, the Centre has set up two synchrotron Radiation Sources : Indus-1 and Indus-2 which are national research facilities and may smaller accelerators for radiation processing applications. The Indus-1 and Indus-2 are now operating in round the clock shifts. These facilities are the only ones of its kind in the country. Many reputed institutions like Indian Institute of Science, IITs, ISRO, Various Universities are utilizing these facilities for research purposes. The Centre has excellent cryogenic facilities as well as state-of-the-art equipments for low temperature physics measurements. A variety of laser systems, particularly high power lasers, have been built and are being used for a wide range of applications.

These include gas lasers (like copper vapour lasers, CO₂ lasers), solid state lasers (like diode pumped solid state lasers, semi-conductor lasers, high power lasers) for the studies in the areas like biomedical applications for lasers and laser-plasma interaction. The Centre also has long standing programmes in the areas of RF-superconductivity, low temperature physics, material science, cold atom physics, non-linear optics, opto-electronics, nano-science etc. The Centre has made important contributions in the construction and operation of Large Hadron Collider at CERN, Geneva, Switzerland.

40. Auditing of Govt. Departments and submitting report to the Parliament is coming under the routine duties of the CAG. Accordingly, CAG had done performance audit of the Department and had pointed out certain short comings. Remedial action has been taken to rectify these short-comings. ..”

5. As to Relief No.(ii) i.e. direction to respondent No.3 to initiate the CBI enquiry into the matters raised by the petitioner (especially in case of mysterious theft/ disappearance of petitioner's Lock-in-amplifier, interception of telephones/e-mails/postal letters/bugging of domestic

conversation of the petitioner, suicide of Lt. Shri Thirumal, suicide of Lt. Attar Singh, suicide of Shri Rajesh Topno and other financial irregularities prevailing in the RRCAT, Indore). Dwelling upon the said aspect, worth it would be, at this stage, to note decision rendered by the Supreme Court as to the circumstances which may warrant direction to CBI to undertake an investigation; in **State of West Bengal vs Committee for Protection of Democratic Rights, West Bengal (2010) 3 SCC 571**, it is held : -

68. Thus, having examined the rival contentions in the context of the Constitutional Scheme, we conclude as follows:

(i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any Constitutional or Statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said Article in

its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the Constitutional Courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between the Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than the Parliament to ascertain whether such limitations are transgressed. Judicial review

acts as the final arbiter not only to give effect to the distribution of legislative powers between the Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of "the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review".

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that Courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure.

(v) Restriction on the Parliament by the Constitution and restriction on the Executive by the Parliament under an enactment, do not amount to restriction on the power of the judiciary under Article 32 and 226 of the Constitution.

(vi) If in terms of Entry 2 of List II of the Seventh Schedule on the one hand and Entry 2A and Entry 80 of List I on the other, an

investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the Statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the court fails to grant relief, it would be failing in its constitutional duty.

(vii) When the Special Police Act itself provides that subject to the consent by the State, the CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State Police, the court can also exercise its constitutional power of judicial review and direct the CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the Constitutional Courts.

Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.

...

70. Before parting with the case, we deem it necessary to emphasize that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases

and in the process lose its credibility and purpose with unsatisfactory investigations.

6. In the case at hand, it is borne out from the communication dated 25.9.2013 by Inspector General of Police, Indore Zone, Indore to Additional Director General of Police, Crime Investigation Department, Police Headquarters, Bhopal which being self-explanatory is reproduced hereunder :

“कृपया उपरोक्त संलग्न संदर्भित पत्र का अवलोकन करने का कष्ट करें, जिसमें आवेदक श्री कृष्ण कुमार मिश्रा c/o पार्वती भार्गव, नि० खेरे की देविन मार्ग, वार्ड 24, छतरपुर ने उनके कार्यस्थल “सेंटर फॉर एडवांस टैक्नोलोजी” आर.आर.कैट कैम्पस इन्दौर से लॉक इन एम्पलीफायर के गायब होने के सम्बन्ध में जांच करने हेतु अनुरोध किया गया है। आवेदक द्वारा केन्द्रीय अन्वेषण ब्यूरो से उक्त जांच कराने हेतु उल्लेख किया गया है।

प्रकरण केन्द्रीय संस्थान से सम्बन्धित है एवं आवेदक केन्द्रीय अन्वेषण ब्यूरो से जांच कराना चाहता है। अतः मेरे मत में इसकी जांच केन्द्रीय अन्वेषण ब्यूरो से कराई जाना उचित होगा।”

7. Another communication which is dated 30.8.2014 is brought on record, addressed to Dr. Ratan Kumar Sinha, Secretary, Department of Atomic Energy, Anushakti Bhavan, Chatrapati Shivaji Maharaj Marg, Mumbai by the Secretary,

Department of Home, Govt. of Madhya Pradesh, Bhopal which is in the following terms :

“आवेदक श्री कृष्ण कुमार मिश्रा, वैज्ञानिक के रूप में राजारमन्ना प्रौद्योगिकी केन्द्र इंदौर में वर्ष 1992 से 2004 तक कार्यरत रहे। वर्तमान में संचालनालय, कोष एवं लेखा, म.प्र. भोपाल में कार्यरत हैं। सूचीदक1 में दर्शित संलग्न शिकायत पत्रों द्वारा श्री मिश्रा द्वारा शिकायत की है कि संस्था के वरिष्ठ वैज्ञानिक अधिकारी अपने पद का दुरुपयोग करते हुए भ्रष्टाचार में लिप्त है एवं अधीनस्थों को प्रताड़ित कर आत्महत्या के लिए बाध्य कर रहे हैं।

2. आवेदक द्वारा मुख्य रूप से संस्था के निदेशक श्री गुप्ता को पद से हटाने, श्री तिरुमाला, वैज्ञानिक की आत्महत्या की जांच एवं अन्य घटनाओं प्रमुख रूप से सन् 2004 में संस्था के कीमती लॉक इन एमलीफायर उपकरण के गायब होने/चुराये जाने, खाण्डेकर एवं श्री गुप्ता के विरुद्ध अपना पक्ष रखे जाने का अवसर दिये जाने, टेलीफोन टेप कराये जाने एवं संस्था में घटित अन्य घटनाओं की सी.बी.आई. जांच कराये जाने की मांग की है।

सूची - 2 में दर्शित संलग्न पुलिस मुख्यालय से प्राप्त रिपोर्ट अनुसार श्री तिरुमाला द्वारा आत्महत्या संबंधी घटना का मर्ग थाना राजेन्द्र नगर में क्र0 39/10 पर दर्ज किया गया था। जांच पश्चात अप0क्र0 208/10 धारा 306 का प्रकरण पंजीबद्ध कर विवेचना की गई। विवेचना में साक्ष्य के अभाव में खात्मा क्र0 1/11, दिनांक 05.01.2011

कता किया गया। संस्था की कीमती मशीन जिसकी कीमत लगभग पांच लाख रुपये बताई गई है, के संबंध में संस्था के अधिकारियों द्वारा दिनांक 15.01.2005 को थाना राजेन्द्र नगर, इंदौर में अप0 क्र0 36/2005, धारा 380 भा.द.वि. का प्रकरण पंजीबद्ध कराया गया। माल मुल्जिम की मतारसी की गई। पता नहीं चलने पर प्रकरण में खात्मा क्र0 32/05, दि. 08.04.2005 को कता किया गया।

उक्त संस्था भारत सरकार, परमाणु ऊर्जा विभाग का अंग है। अतः आवेदक द्वारा की गई शिकायतें सूची – 1 एवं सूची – 2 में दर्शाए अनुसार मूलतः संलग्न प्रस्तुत करते हुए निर्देशानुसार अनुरोध है कि प्रकरण में समुचित निर्णय लेते हुए आवेदक को की गई कार्यवाही से अवगत कराने का कष्ट करें। ”

8. These communications are brought on record by the State of M.P. in reply to I.A. No.2041/2016 and I.A. No.2042/2016. The said communications when read in the context to investigation carried out by the State Police and as reflected in the reply filed by respondents No.4 to 8 on 20.2.2015; wherefrom, it is borne out that after the article in question was stolen, an offence was registered vide Crime No.36/2005 against unknown person at Police Station Rajendra Nagar District Indore on 15.1.2005. That, closure report was filed before the Additional Chief Judicial Magistrate

on 28.4.2005; however, the Magistrate did not accept the closure report as the statement of petitioner and one Shailja were not recorded. It is observed from the reply that the matter is still pending investigation and during pendency whereof, respective Authorities have entered into correspondence as is evident from the communications dated 25.9.2013 and 30.8.2014 referred to *supra*.

9. In this context, reference can also be had of an affidavit sworn in by Shri Gopalkrishnan Venkatesan, Administrative Officer-III, Raja Ramanna Centre for Advanced Technology, Department of Atomic Energy, Indore on 14.1.2017; wherein, Paragraph 11, it is stated :

"11. Department of Atomic Energy, Mumbai had written a letter dated 29.5.2006 to Inspector General of Police, Madhya Pradesh to order reopening of the case in the context of the Police's decision to close the case, so as to trace the missing item by investigating the matter through State Intelligence Branch. Police investigation is a State subject and it is for the concerned Authority in the State Government of Madhya Pradesh to decide whether the case is to be handled by a Central Investigation Agency in order to arrive at the case's logical conclusion. The DAE (Respondent No.2) or RRCAT (respondents No.9 to 12) may not have any role in the decision of

Police/State government about further investigation by a Central agency.”

10. In view of the correspondence entered into between the concerned Authorities and the affidavit sworn in by Shri Gopalkrishnan Venkatesan, Administrative Officer-III, RRCAT, gravity and seriousness of the crime which is subject matter of investigation cannot be ruled out and since the local Police is unable to investigate the crime effectively, this Court is of the considered opinion that the same deserves to be investigated by the Central Bureau of Investigation.

11. The Supreme Court in **Dharam Pal vs State of Haryana (2016) 4 SCC 160** has held –

“20. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be

answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.”

12. In the result, the petition is **disposed of** finally with a direction to the CBI to conduct the investigation in respect of Crime No.36/2005 registered at Police Station Rajendra Nagar, Indore.

13. All interlocutory applications stands disposed of.

**(SANJAY YADAV)
JUDGE**

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