

Court No. - 2

Case :- MISC. BENCH No. - 626 of 2021

Petitioner :- Dr. Brajendra Kumar Yadav

Respondent :- State Of U.P.Thru Addl.Chief Secy. Home Deptt.
Lucknow & Ors

Counsel for Petitioner :- Shobhit Mohan Shukla,Amarnath Singh
Baghel

Counsel for Respondent :- C.S.C.

Hon'ble Devendra Kumar Upadhyaya,J.

Hon'ble Manish Kumar,J.

Heard Shri J. N. Mathur, learned Senior Advocate, assisted by Shri Shobhit Mohan Shukla and Shri Amarnath Singh Baghel for the petitioner and learned State Counsel representing the State-respondents.

Under challenge in this petition is an order dated 24.02.2020 passed by the State Government in the Department of Home whereby certain matters relating to the petitioner have been referred for an enquiry to the Special Investigating Team.

The petitioner is a Central Government employee and while working as Director in the Department of Agriculture, Cooperative and Farmers' Welfare, Government of India, was appointed as Joint Managing Director of U.P. Cooperative Sugar Factories Federation Ltd. on 27.11.2012 on deputation where he remained posted in the said capacity till 23.05.2017. After completion of his deputation, the petitioner was repatriated to his parent department in the Government of India.

In respect of the certain alleged misconduct/acts of the petitioner, the State Government had constituted a Committee which comprised of the Director, Panchayati Raj Audit Directorate and the Commissioner, Lucknow Division, Lucknow which submitted its

report on 31.07.2017. The said enquiry report is available on record as annexure-3 to the writ petition.

According to the learned counsel for the petitioner, nothing adverse or incriminating material was found against the petitioner in the said enquiry report dated 31.07.2017. The State Government, however, wrote a letter to the Government of India on 19.03.2019 reporting therein certain misconducts allegedly committed by the petitioner during his tenure on deputation with U.P. Cooperative Sugar Factories Federation Ltd. By the said letter, a request was made to the Government of India which is the parent department of the petitioner to conduct disciplinary proceedings. However, as per the learned counsel for the petitioner, the Government of India in its wisdom did not proceed in the matter.

The Principal Secretary, Department of Sugar Industries, wrote a letter on 17.10.2017 to the Home Department for referring the matter for enquiry/investigation by the Central Bureau of Investigation. The said letter dated 17.10.2017 is also on record at page 115 of the writ petition. As per the submissions made by the learned Senior Advocate appearing for the petitioner, the State Government did make a request to the Government of India for referring the matter to the Central Bureau of Investigation. However, the said request was not acceded to; rather the Central Bureau of Investigation regretted that it cannot conduct enquiry/investigation into the matter as requested for by the State Government. It has further been submitted by the learned counsel for the petitioner that once the State Government failed in its endeavour/attempt to get the matter enquired/investigated by the Central Bureau of Investigation and also to get the departmental proceedings instituted/conducted against the petitioner by his parent department i.e. Government of India, the impugned order has now been passed referring the matter relating to alleged amassment of assets disproportionate to the known sources of income of the petitioner to the Special Investigating Team.

His submission, thus, is that the impugned order has been effectuated not for any *bona fide* reason but on account of malice and is nothing but a ploy to harass the petitioner by subjecting him to various kinds of enquiries and requiring him to travel from Delhi to Lucknow by the Police Officers who are comprised in the Special Investigating Team. He has further submitted that in the enquiry report submitted by the Commissioner, Lucknow and the Director, Panchayati Raj Audit Directorate, no adverse material could be collected against the petitioner and accordingly reference of the matter to the Special Investigating Team by the State Government vide impugned order dated 24.02.2020 is not only unwarranted but also is illegal. Learned Senior Advocate has also argued that subjecting the petitioner to all kinds of roving enquiries is not only arbitrary but also infringes his fundamental rights and liberty as enshrined under Article 21 of the Constitution of India.

Learned State Counsel, on the other hand, opposing the prayer made in the writ petition, has submitted that by the impugned order dated 24.02.2020 the Special Investigating Team has only been required to conduct a preliminary enquiry. He has further submitted that after completion of the preliminary enquiry by the Special Investigating Team, it will be decided by the competent authority as to whether any criminal proceedings are to be launched against the petitioner or not. His submission is that, as a matter of fact, before lodging the criminal proceedings against a person said to be involved in some criminal act, conduct of preliminary enquiry by the Special Investigating Team is a kind of caution exercised by the State authorities so as to ensure that no false implication of an otherwise innocent person in any criminal proceeding is made. We have carefully considered the rival submissions made by the learned counsel appearing for the respective parties and have also perused the material available on record of this writ petition.

The Special Investigating Team in the State of U.P. has been constituted by means of a Government Order dated 16.06.2007. According to the said Government Order, to meet the exigencies arising out of involvement of influential persons and public servants in serious economic offences by misuse of their position, need was felt to constitute the Special Investigating Team empowering it to conduct enquiries and investigations of such matters. The decision, thus, was taken to constitute the Special Investigating Team which is to comprise of the officers with high efficiency. The Government Order dated 16.06.2007 provides a mechanism as to how the Special Investigating Team shall conduct its business. According to the said Government Order, the Special Investigating Team is not only empowered to act as Investigating Agency in terms of the relevant provisions of the Code of Criminal Procedure but is also empowered to make enquiry/preliminary enquiry into a reported case of some criminal act by influential persons/public servants.

It may be observed that for launching criminal proceedings in case of any reported criminal act, no preliminary enquiry or fact finding enquiry is necessarily required under law. If any cognizable offence comes to light or comes to notice to any person, straightaway a First Information Report under section 154 of Code of Criminal Procedure can be lodged and on lodging of such an F.I.R. the machinery of the criminal justice system comes into motion.

In the instant case instead of lodging the First Information Report against the reported acts of the petitioner, which according to the State touches upon the criminal elements, the State Government has taken a decision to refer the matter to the Special Investigating Team. As clarified by the State Government, the reference by the impugned order dated 24.02.2020 to the Special Investigating Team is only confined to conducting a preliminary enquiry and it is not an investigation for the reason that the Special Investigating Team has not lodged any First Information Report till date. Occurrence of the

word "Vivechna" in the impugned order dated 24.02.2020 thus appears to be by mistake. The correct word which ought to have used by the State Government is "Jaanch". As per the Government Order dated 16.06.2007 by which the S.I.T. in U.P. has been constituted, after completion of the enquiry/preliminary enquiry, the matter is to be referred to a Committee which is to be headed by the Principal Secretary/Additional Chief Secretary, Government of U.P., Department of Home and which also comprises of Director General of Police, U.P. and Head of the Department of the Administrative Department of the person concerned in respect of whom preliminary enquiry has been conducted. The said Committee headed by the Principal Secretary/Additional Chief Secretary, Home has been mandated to consider the preliminary enquiry report to be submitted by the S.I.T and take a decision as to whether any F.I.R. is to be lodged or a charge-sheet etc. is to be submitted in the court against the public servant, who is found erring in the enquiry report. The said Committee is also empowered to make a recommendation that instead of launching criminal prosecution, the person against whom preliminary enquiry has been conducted, will be proceeded against departmentally in departmental proceedings.

From the facts as stated above and also from a perusal of the provisions contained in the Government Order dated 16.06.2007, whereby the S.I.T. has been constituted, it appears that the State Government has referred the matter which is reported to it, a gist of which can be found in the letter dated 17.10.2007 written by the Principal Secretary, Sugar Industries, State of U.P. to the Principal Secretary, Department of Home, to the Special Investigating Team for conducting a preliminary enquiry. In our considered opinion, if some misconduct or any illegal or irregular act, which may or may not amount to criminality, is reported to the State Government, the preliminary enquiry can be ordered to be conducted by the Special Investigating Team.

Submission of the learned counsel for the petitioner that request of the State Government made to the Central Government for referring the matter to the C.B.I. has not been acceded to and further that the parent department of the petitioner has not conducted any departmental proceedings in respect of the alleged misconduct reported by the State Government and hence the preliminary enquiry now being conducted by the S.I.T. is unwarranted, does not appeal to us. His submission based on the report submitted by two Member Committee on 31.07.2017 that nothing incriminating against the petitioner has been found in the said report and hence no reference could be made to the S.I.T. also does not stand its ground. From a perusal of the enquiry report dated 21.07.2017 it seems that the said enquiry was conducted *inter alia* on various complaints made by various persons against the petitioner. In respect of the matter which finds referred in the letter of State Government dated 17.10.2007 as is contained at page 115 of the writ petition, even if the enquiry report dated 31.07.2017 does or does not find any incriminating material against the petitioner, the same would not, in our opinion, prohibit the State Government to refer the matter to the Special Investigating Team for conducting the preliminary enquiry.

As regards the submission of learned Senior Advocate regarding alleged harassment, we may only observe that the Special Investigating Team is under a mandate of the State Government to conduct preliminary enquiry referred to it and in the course of enquiry if some one has to undertake journey from Delhi to Lucknow or to any other place, the same cannot be termed to be harassment. In the course of a preliminary enquiry or even in the course of criminal investigation, for interrogation purposes, any person if summoned is under an obligation to cooperate with the enquiry team/Investigating Agency.

We, thus, are not inclined to interfere in this writ petition which is hereby **dismissed**.

Before parting, we may, however, add that the Special Investigating Team, while conducting the preliminary enquiry as mandated to it by the Government Order dated 24.02.2020, shall also keep into consideration the convenience of the petitioner as he is a high ranking officer working with the Government of India and is presently posted in Delhi.

Order Date :- 20.01.2021

akhilesh/

[Manish Kumar, J.] [D. K. Upadhyaya, J.]