

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).1 2 9 8 1 / 2 0 0 8

(From the judgement & order dated 1 9 / 0 3 / 2 0 0 8 in CM W P No.1 2 6 6 0 / 2 0 0 8 of  
The HIGH C O U R T O F J U D I C A T U R E A T A L L A H A B A D)

NAHA R S I N G H Y A D A V & A N R.

Petitioner(s)

VER SUS

U N I O N O F I N D I A & O R S.

Respondent(s)

(With appln(s) for permission to place addl. documents on record)

W I T H

W. P(C) NO. 3 0 6 of 2 0 0 8

With appln. for interim directions and exem. from filing O.T.  
and amendment of prayer portion and c/delay in filing appln.  
for amendment and intervention)

W I T H

I.A. No.1 In &SL P (C) No...../ 2 0 0 8 (CC No. 1 2 5 7 1 )  
(For permission to file SL P and office report)

Date: 2 3 / 0 9 / 2 0 0 8 These petitions were called on for hearing today.

C O R A M :

HON' B L E Dr. J U S T I C E A R I J I T P A S A Y A T  
HON' B L E MR. J U S T I C E V. S. S I R P U R K A R  
HON' B L E MR. J U S T I C E G. S. S I N G H V I

For Petitioner(s)  
in SL P 1 2 9 8 1 / 2 0 0 8

Mr. Anil B. Divan, Sr. Adv.  
Mr. M.N. Krishn a m a n i, Sr. Adv.  
Mr. K.C. K a u s h i k, Adv.  
Mr. Abhishek Yadav, Adv.  
Mr. Ranvir Singh, Adv.  
Mr. A.K. S a h u, Adv.  
Ms. Gayathri Devi, Adv.  
Mr. Br aj Kishore Mishra, Adv.

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in W. P .(C) No. 3 0 6 / 2 0 0 8 :

Mr. Shanti Bhush a n, Sr. Adv.  
Mr. P r a s h a n t Bhush a n, Adv.  
Mr. Rohit Kr. Singh, Adv.  
Mr. Sumeet Shar m a , Adv.  
Mr. Mayank Mishr a, Adv.

In SL P (C)...CC:1 2 5 7 1 / 0 8

Petitioner- in-person

For Respondent(s)

Mr. G.E. Vahanvati, S.G.  
Mr. Chinmoy P r adip Shar m a , Adv.  
Mr. B. Krishn a Pr a s a d , Adv.

Mr. Shail Ku m a r Dwivedi, AAG  
Mr. Manoj Ku m a r Dwivedi, Adv.  
Mr. Gunna m Venkateswa r a Rao, Adv.

Mr. Sunil Dutta Mishra, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Though, by order dated 0 9 . 0 9 . 2 0 0 8 , the matters were directed to be listed on 2 2 . 1 0 . 2 0 0 8 , awaiting response of the State of Uttar Pr adesh to the suggestion given by the police officials that the investigation of the case should be done through Central Burea u of Investigation (in short 'the CBI'), the date was preponed, as, in the meantime, the State of Uttar Pr adesh indicated to this Court that the State is agreeable that the investigation be handed over to the CBI. An affidavit in this regard has been filed on

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2 2 . 0 9 . 2 0 0 8 . Annexed to the same is an order dated 1 0 . 0 9 . 2 0 0 8 passed by the Government of U.P. Learned Solicitor General, on instructions, states that the CBI is willing to take over the investigation subject to certain manpower and infrastruc tural support by the State Government.

In the affidavit filed by the State of U.P., the State Government, in terms, has stated as follows:

"That the State Government has communicated its aforesaid decision to Secretary, Ministry of Personnel, Public Grievances and Pensions, Government of India in prescribed proforma vide letter No.2 3 6 6 / 6 Pu- 3- 2 0 0 8 - 1 5( 6 2) P / 0 8 dated 10 th September, 2 0 0 8 . A perusal of the aforesaid letter will reveal that the State Government of U.P. has given its consent for the investigation of the said case by the CBI. A true translated copy of Letter No.2 3 6 6 / 6 Pu- 3- 2 0 0 8 - 1 5( 6 2) P / 0 8 of Secretary, Home Department, Govt. of U.P. dated 1 0 . 0 9 . 2 0 0 8 , alongwith its enclosures is marked and filed as Annexure A-1 (Colly) to this affidavit."

The order dated 10.09.2008 reads as follows:

"Government of U.P.  
Home (Police) Section- 3  
No.2366 (I)/VI-P-3-2008

Dated: Lucknow : 10<sup>th</sup> September, 2008

ORDER

In Pursuance of the provision of section- 6 of Delhi Special Police Establishment Act, 1946 (25 of 1946), the Governor of State of U.P. is pleased to accord consent to the extension of the power and jurisdiction of the member of Delhi Special Police Establishment in the whole of the State of Uttar Pradesh for investigation of the offences punishable relating to Case Crime No.152/08 under Section 409/420/467/468/471/477A/120-B I. P.C. and 8/9/14/13(1)(d) r/w 13(2) Anti Corruption Act, 1988 at P.S. Kavinagar, Distt. Ghaziabad and other offence(s) or attempt, abetment and conspiracy in relation to or in connection with the said offence(s) committed in course of the same transaction or arising out of the same fact or facts, in relation to the aforesaid cases."

In our view, the order is very comprehensive and not only deals with the cases which are covered by Crime Case No.152 of 2008, but also, other offence/(s), attempt, abetment and conspiracy in relation to or in connection with the offence(s) noted and/or committed in course of the same transaction or arising out of the same fact or facts, in relation to the aforesaid cases.

The CBI shall nominate an Investigating Officer which shall be incharge of the investigation. It shall be open to him to indicate to the State, the officer or officers whose assistance shall be required by him for a thorough and comprehensive investigation. The State Government shall place the services of these officers at the disposal of the Investigating Officer of the CBI so that the investigation can be done properly and effectively.

Mr. Anil B. Divan and Mr. Shanti Bhushan, learned senior counsel appearing for the petitioners have submitted that considering the sensitivity of the matter, it would be appropriate if effective steps are taken for preserving the original records which would be necessary for the purpose of investigation and

subsequent action. The Investigating Officer shall do well to take charge of the documents already in possession of the State Police, in addition to what may be required to be seized from the Treasu ries involved. The documents shall be microfilmed and a copy shall be deposited with the Secretary General of this Court and a copy shall be handed over to the State Police and the copies of the microfilmed documents shall be retained

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with the CBI. The original documents, needless to say, shall be in the custody of the CBI's Investigating Officer. The documents already collected and the records of investigation already done, shall be handed over to the nominated Investigating Officer forthwith. The infrastructural requirements, as indicated or to be indicated by the Investigating Officer, shall be provided by the State Government.

At this juncture, it needs to be noted that Mr. Anil B. Divan and Mr. Shanti Bhush a n, learned senior counsel submitted that so far as retired Judicial Officers are concerned, they are not protected by any law or decision of this Court relating to serving Judicial Officers. There is no need to deal with that aspect at the present juncture.

A request has been made that this Court may continue to monitor the cases, as has been done in several cases. For the present, let a status report is submitted in this Court by the CBI within three months. The matters shall be listed after three months.

It is made clear that though we have directed the matters to be listed after three months, the CBI, shall be free to file the final report or charge sheet, as the

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case may be at an earlier point of time and to proceed thereafter in accordance with law. The court before which the final report

or charge sheet is filed shall deal with the report or charge- sheet,  
as the case may be, as required in law.

There are several other issues raised in these petitions  
which shall be dealt with at an appropriate point of time and  
necessa ry dates shall be fixed therefor.

Copy of the order be handed over to learned Solicitor  
General and learned counsel for the State of U.P.

As noted above, these cases shall not be listed on  
22.10.2008 and a fresh date for listing shall be given.

(Shashi Bal a Vij)  
Court Master

(Neena Verm a)  
AR- cum- P S