



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 2487/2022

Akhil Bhartiya Vidyarthi Parishad (Abvp)

-----Petitioner

Versus

The State Of Rajasthan and Ors.

-----Respondents



For Petitioner(s) : Mr. Aayush Mall  
Mr. Ved Prakash Sharma  
Mr. Kumar Piyush Pushkar  
Mr. Bhunesh Sharma  
For Respondent(s) : Mr. M.S. Singhvi, AG assisted by  
Mr. Siddhant Jain and  
Mr. Sheetanshu Sharma  
Mr. Rajesh Maharshi, AAG through VC  
Mr. C.L. Saini, AAG  
Mr. Vigyan Shah  
For Applicant(s) : Mr. Hanuman Singh through VC  
Mr. Ashwani Kumar Sharma through  
VC

**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI  
HON'BLE MR. JUSTICE SUDESH BANSAL**

**Order**

**24/02/2022**

**D.B. Civil Misc. Application No.1/2022:**

1. This application is filed for being joined as an additional respondent. The applicant had appeared in the Rajasthan Eligibility Examination for Teachers-2021 (REET). It is an admitted position that there was a paper leak in process of conducting the examination. The petitioner in the public interest petition has made a prayer for handing over the investigation to Central Bureau of Investigation ('CBI' for short). We do not find that the present applicant has any *locus* in the public interest petition



merely on the ground that he was a REET aspirant and therefore his view point should be taken into consideration before deciding the main prayer of the petitioner namely whether to handover the ongoing investigation to CBI or not.

2. The application is dismissed.

**D.B. Civil Writ Petition No. 2487/2022:**

1. The petitioner is a voluntary organization and has PAN India presence. The petitioner has filed his petition as a public interest litigation. The main prayer of the petitioner is for transferring the investigation of REET-2021 examination paper leak case to CBI.

Brief background facts are as under:-

2. The State Government had announced the programme for conducting the REET-2021 examination in two stages. The REET-2021, level-2 test was conducted on 26.09.2021 in the morning session. The materials on record would show that there was a leakage of the question paper of this examination on 24.09.2021 which of course came to light a little later. An FIR was registered before Police Station Gangapur City, District Sawai Madhopur on 27.09.2021 for commission of offences punishable under Sections 420 and 120B of IPC read with Sections 4 and 6 of the Rajasthan Public Examination (Prevention of Unfair Means) Act, 1992. Few arrests were made on the same day. Further investigation was carried out by a Special Operation Group (SOG) constituted by the State Government. This SOG is headed by Additional Director General of Police Mr. Ashok Rathore. A factual report was placed before us by the learned Advocate General prepared by the SOG which would show that by now 26 accused have been arrested and charge sheets are also filed. One juvenile delinquent has been presented before the competent court. It is stated that the



investigation is still continuing since some of the accused are absconding.

3. The case of the petitioner is that the entire incident involves large number of highly influential people, some of them holding position of power in government service or in public life. According to the petitioner therefore free and fair investigation even by SOG is not possible in the present case. As long as the investigation is conducted by the police officials of the State Government, the real culprits would not be brought to book.

4. The petitioner has therefore prayed that the investigation be transferred to CBI.

5. In order to support this prayer the petitioner has made certain allegations in the petition to establish proximity of some of the accused with people holding position of influence. Certain allegations are made against the education minister. It is pointed out that the Chief Minister himself holds the portfolio of Home Department and the police is thus directly answerable to Chief Minister. It is stated that some of the members of Rajiv Gandhi Study Circle which does not have any official status were assigned serious responsibilities during the conduct of the examination. It is alleged that the authorities are trying to hush up the matters and the investigation is not allowed to be carried in free and fair manner. In order to show proximity of some of the persons involved allegedly in commission of the offences, the petitioner has relied on certain documents which are mainly in the nature of news-paper reports, photographs in public domain etc.

6. The respondent Nos.1 and 3 have filed a detailed reply and strongly denied the allegations made in the petition. It is pointed out that this is not the first instance of paper leak during public



examination. Several such instances have happened in the past. It is stated that the petitioner had not asked for CBI investigation in such cases. The proximity of the accused with the people in government organisations is denied. Credibility of material collected from newspaper reports and that circulating in social media is questioned. It is stated that the petitioner has made general allegations without verification of facts, many of these allegations are totally incorrect. It is averred that looking to the seriousness of the situation SOG was constituted which is carrying out the investigation in full earnest and free and fair investigation is going on. There is thus no need to transfer the investigation to CBI.

7. Appearing for the petitioner, learned counsel vehemently contended that the scam is widespread and several people of influence holding important public positions are involved. No free investigation can be expected under such circumstances from the state police. It was highlighted that the Chief Minister himself is holding the home portfolio and therefore the police is directly under the control of the Chief Minister. It was also submitted that the several persons holding no official positions were assigned responsible duties in the process of conducting the examination. Counsel therefore submitted that only when the investigation is transferred to the CBI, independent and impartial investigation can be conducted so that the culprits can be brought to book. He relied on certain decisions of the Supreme Court reference to which shall be made at an appropriate stage.

8. On the other hand, learned Advocate General strongly opposed the petition contending that in this public interest petition the petitioner has not provided any reliable evidence of the





investigation not being conducted properly. The prayers are based on mere conjectures and insinuations without any supporting evidence. Newspaper reports and other documents obtained from social media do not form reliable basis for giving the directions to transfer of investigation to CBI. He contended that though the High Court has the power to order such transfer of investigation the same must be exercised in extremely rare occasions. In the present case the petitioner has not brought on record any material suggesting that such directions are necessary. Our attention was drawn to the factual report submitted by the SOG and on the strength of which it was argued that without wasting any time the investigating agency has made considerable progress. Several accused have been arrested and charge sheets are also filed. He also relied on certain decisions reference to which shall be made at an appropriate stage.

9. The law on the question of power of the High Court to transfer pending investigation to CBI even without the consent of the State Government is well settled. It is always open for the constitutional court in exercise of writ jurisdiction to order such transfer of investigation if the facts so justify. However, in several judgments the Supreme Court has put considerable stress on the requirement of observing restraint in passing any such order. It is stated that such action should be rare. Investigation cannot be transferred for the mere asking. Unless special circumstances exist which demonstrate that in absence of transfer of investigation to CBI gross injustice would be caused and proper investigation would not be carried out, such orders should not be passed. In case of **State of West Bengal and Ors. Vs. Committee for Protection of Democratic Rights, West**



**Bengal and Ors., reported in (2010) 3 SCC 571,** the Constitution Bench of the Supreme Court has brought out both these aspects in the following manner:-

“69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

70. Before parting with the case, we deem it necessary to emphasise 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.”



10. In case of **Shree Shree Ram Janki Ji Asthan Tapovan Mandir and Anr. Vs. State of Jharkhand and Ors., reported in (2019) 6 SCC 777**, a two Judge Bench of the Supreme Court observed as under:-

"21. We find that the finding recorded by the High Court that the Deity could not transfer its land in any case is not tenable. The appellant relies upon statutory provisions in support of its stand to transfer of land. The sweeping remarks that the allegations are against the Government and the Board which consist of Government functionaries; therefore, the matter requires to be investigated by CBI are wholly untenable and such sweeping remarks against the Government and/or the Board should not have been made. The functioning in the Government is by different Officers and the working of the Executive has inbuilt checks and balances. Therefore, merely because, permission has been granted by a functionary of the State Government will not disclose a criminal offence. The High Court has thus travelled much beyond its jurisdiction in directing investigations by CBI in a matter of sale of property of the Deity. Still further, the High Court has issued directions without their being any complaint to the local police in respect of the property of the religious Trust."

11. In the case of **Sujatha Ravi Kiran alias Sujatasahu Vs. State of Kerala and Ors., reported in (2016) 7 SCC 597**, the three Judge Bench of the Supreme Court referred to the observations made in the case of **State of West Bengal Vs. Committee for Protection of Democratic Rights (supra)** and on facts came to the conclusion that the case on hand did not entail a direction for transferring the investigation from the state police to CBI. However for better investigation a special investigation team (SIT) was formed.

12. In case of **Arnab Ranjan Goswami Vs. Union of India and Ors., reported in (2020) 14 SCC 12**, it was observed that an investigation to CBI is not a matter of routine. The Court emphasized that this is an extraordinary power to be used





sparingly and in exceptional circumstances. Reference was made to the decision in the case of **State of West Bengal Vs. Committee for Protection of Democratic Rights (supra)**. It was further observed as under:-

"52. In assessing the contention for the transfer of the investigation to the CBI, we have factored into the decision-making calculus the averments on the record and submissions urged on behalf of the petitioner. We are unable to find any reason that warrants a transfer of the investigation to the CBI. In holding thus, we have applied the tests spelt out in the consistent line of precedent of this Court. They have not been fulfilled. An individual under investigation has a legitimate expectation of a fair process which accords with law. The displeasure of an accused person about the manner in which the investigation proceeds or an unsubstantiated allegation (as in the present case) of a conflict of interest against the police conducting the investigation must not derail the legitimate course of law and warrant the invocation of the extraordinary power of this Court to transfer an investigation to the CBI. Courts assume the extraordinary jurisdiction to transfer an investigation in exceptional situations to ensure that the sanctity of the administration of criminal justice is preserved. While no inflexible guidelines are laid down, the notion that such a transfer is an "extraordinary power" to be used "sparingly" and "in exceptional circumstances" comports with the idea that routine transfers would belie not just public confidence in the normal course of law but also render meaningless the extraordinary situations that warrant the exercise of the power to transfer the investigation. Having balanced and considered the material on record as well as the averments of and submissions urged by the petitioner, we find that no case of the nature which falls within the ambit of the tests enunciated in the precedents of this Court has been established for the transfer of the investigation."

13. Bearing in mind these legal principles if we revert back to the facts of the case and materials on record, we do not find that the petitioner has made out any case for transferring the investigation to CBI. It is undoubtedly a serious case of lapse in controlling leakage in a public examination where large number of students or aspirants had put their hopes in. As per the initial investigation carried out the SOG itself shows a systematic conspiracy and fairly





widespread network which either was involved from the beginning or seems to have gained the benefit out of this leakage. Nevertheless so far we have no evidence of complicity of the influential members holding important positions in Government or public life so that the investigating agency can be said to be under pressure preventing it from carrying out the investigation impartially. Mere apprehensions, allegations based on unreliable as well as unverified materials and documents and on a general possibility that the investigating agency may not allowed to function freely, cannot be the grounds for taking such a serious step of transferring the investigation to a central agency. As observed by the Supreme Court in the case of **Arnab Ranjan Goswami (supra)** an element of maintaining federal structure is also an important aspect while considering the transfer of investigation to CBI from the state police.

14. The respondents have filed a detailed reply denying all the factual averments and allegations made by the petitioner and even in some cases demonstrating that some of the allegations were completely false or in any case made on the basis of documents and materials which are not verified.

15. We may now refer to the decisions relied upon by the counsel for the petitioner. Reference was made to the decision in the case of **Rubabbuddin Sheikh Vs. State of Gujarat and Ors., reported in (2007) 4 SCC 404**. It was however a case where the state police was found to be involved in a fake encounter case. Investigation was carried out by the state police. Not satisfied with such ongoing investigation, finding that several



police personnel were involved in a fake encounter case, the Supreme Court decided to handover the investigation to CBI.

16. Reliance was also placed on the decision in the case of **Subrata Chatteraj Vs. Union of India and Ors., reported in (2014) 8 SCC 768**, in which in the facts of the case investigation was handed over to the CBI. Several earlier decisions were noted where it was observed that such action of transfer of investigation would be rare and exceptional. It was observed as under:-

"9. It is unnecessary to multiply decisions on the subject, for this Court has exercised the power to transfer investigation from the State Police to the CBI in cases where such transfer is considered necessary to discover the truth and to meet the ends of justice or because of the complexity of the issues arising for examination or where the case involves national or international ramifications or where people holding high positions of power and influence or political clout are involved. What is important is that while the power to transfer is exercised sparingly and with utmost care and circumspection this Court has more often than not directed transfer of cases where the fact situations so demand."

17. The investigation was transferred on the ground that the case at hand concerned a major financial scam affecting lacs of depositors across several States. The material revealed that several companies were engaged in the business of receiving deposits from the public at large. The *modus operandi* of such companies involving ponzi schemes was similar. They had evolved newer and more ingenious ways of tantalizing gullible people to make deposits and siphon off the funds. The companies had promised the investors high returns on their deposits to lure them.

18. Having said that, we are not prepared to close this public interest petition. Investigation must not be fair but must also appear to be fully fair and free from any pulls or pressures. As of



now, we do not see any reason to disturb the ongoing investigation in the hands of SOG. However we would keep the supervisory control of this ongoing investigation. This would enable us to observe closely the further progress of investigation and consider the option of forming a special investigating team if at any stage we find that the investigation is not progressing satisfactorily.

19. List on 06.04.2022. Progress report of the investigation carried out till then shall be presented on such date. S.B. Civil Writ Petition Nos.11979/2021 and 11553/2021 which are filed before the learned Single Judge and stated to be pending will be tagged along with this petition.

(SUDESH BANSAL),J

(AKIL KURESHI),CJ

N. Gandhi/s-106

