

In the context of the reports of government interference in the CBI investigation into irregularities in the allocation of coal blocks and alteration of the findings of the agency in the progress report submitted to the Supreme Court, Common Cause on April 15, 2013 filed the attached Application for Directions in WP(C) 463/2012.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. NO. _____ OF 2013

IN

WRIT PETITION (CIVIL) NO. 463 OF 2012

PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

COMMON CAUSE & ORS

.....

Petitioners

Versus

UNION OF INDIA & ORS

..... Respondents

APPLICATION FOR DIRECTIONS

ON BEHALF OF THE PETITIONERS

To,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION
JUSTICES OF THE HON'BLE SUPREME COURT OF INDIA

The humble application of the petitioner above named:

1. The above petition relates to the massive scam that occurred in the allocation of a precious natural resource, i.e. coal, causing loss to the public exchequer running into tens of lakhs of crores of rupees. Mining leases with hundreds of million tonnes of coal reserves were gratuitously handed over to a few select private profiteers without any corresponding benefit to the public. Not only was a scarce national resource thus gifted away to private companies for free, the process followed in selecting the allottees was also completely opaque and arbitrary, and hence wholly unconstitutional.

2. There is no doubt that serious criminal offences, including corruption, cheating, breach of trust, fraud and criminal conspiracy

were committed in the allocation of coal blocks. The Central Vigilance Commission (CVC) had directed the Central Bureau of Investigation (CBI) to investigate the allocation pursuant to which the CBI has registered 10 FIRs for offences of corruption, cheating, and criminal conspiracy against several companies and “unknown public officials”. It is also beyond doubt that the persons that are the subject matter of the investigation are extremely influential and powerful. The involvement of the PMO, the Ministries of Coal, Steel and Power, the State Governments and big corporate entities would need to be investigated as these were parties to the decision-making process in the allocation of coal blocks or were the direct beneficiaries of the said allocation.

3. The petitioners have, therefore, prayed in the above writ petition, prayed for a thorough court-monitored investigation by a Special Investigation Team (SIT). The above petition was listed on 19.11.2012 when this Hon’ble Court was pleased to issue notice to the Union of India & the CBI. Pursuant to the notice, the CBI filed an affidavit affirming that they were pursuing the investigation from all

angles and were working independently. The said affidavit was filed by their senior investigation officer, DIG Mr. Ravi Kant, who was supervising the entire investigation into the case. On the next date of hearing, i.e. 24.01.2013, this Hon'ble Court directed the CBI to file the status report in the form of an affidavit. However, the CBI later took leave of this Hon'ble Court to file it in a sealed cover and filed the same on 08.01.2013.

4. At the time of hearing, this Hon'ble Court pointedly asked the Learned Additional Solicitor General (ASG) appearing for the CBI as to whether the status report filed by the CBI dated 08.01.2013 had been shared with the Government/political executive, to which he categorically answered that the status report had **not** been shared with the Government. This Hon'ble Court then asked the Learned Attorney General appearing for the Government as to whether he had seen the report or had access to it, to which he said he had **not** seen the report since the same is **not** being shared with the Government.

5. This Hon'ble Court, therefore, on the said date 12.03.2013 was pleased to pass the following order:

*“The status report dated March 8, 2013 submitted by C.B.I. is taken on record. The same may be kept in sealed cover again. Further status report may be submitted by C.B.I. on or before April 26, 2013. **Let an affidavit be filed by the Director of C.B.I. that the status report submitted before this Court dated March 8, 2013 was vetted by him and nothing contained therein has been shared with the political executive.** He must also state in the affidavit that same procedure will be followed in respect of subsequent status reports that may be filed before this Court.”*

6. Immediately after the said hearing, DIG Ravi Kant, who had filed the CBI affidavit in January and who was supervising the entire coal scam investigation, was transferred by the Government from the CBI to the IB on 23.03.2013. This confirms the fact that the CBI remains under the complete control of the Government to the extent that the Government can simply replace the investigation officer even while this Hon'ble Court is monitoring the investigation.

7. Moreover, it now transpires that both the CBI and the Government had simply misled this Hon'ble Court at the 12.03.2013 hearing. Not only had the status report been seen by the Government before it was filed in this Hon'ble Court, the same had also been vetted and its observations diluted by the CBI at the instance of the Government. In fact, The Law Minister, Mr. Ashwini Kumar, had summoned the CBI Director for a meeting to discuss the status report to be filed in this Hon'ble Court. In the said meeting, which went on for a long time, the entire status report was discussed and altered to dilute the initial findings of the CBI. The CBI Director allowed the report to be diluted at the instance of the Government. In a separate meeting, PMO officials also discussed and vetted the status report. This information was given to the counsel for the petitioners by credible independent sources and has now been confirmed by a report published in the Indian Express dated 13.04.2013. A copy of the said report is annexed as **Annexure A**. (Page _____) The report also states that the CBI Director has met the Attorney General to discuss the wordings of the affidavit that he needs to file in compliance of 12.03.2013 order.

8. The said revelations unequivocally show the pervasive nature of the control of the Government on the CBI because of which the CBI has never been able to investigate any major corruption case to its logical conclusion. Even in a high-profile scandal like the present one that is being monitored by this Hon'ble Court, the Government is able blatantly to influence the investigation in complete violation of the rule of law and all norms of criminal procedure. The interference of the Government is not only illegal and criminal, it also amounts to a criminal contempt of this Hon'ble Court.

9. It is an established fact that the CBI works more or less as a department of the Central Government. This is for the reason that the entire administrative and financial control of the CBI remains with the political executive, which also decides on the appointments, transfers, postings, penalties, appraisal reports and grading of its officers. The hegemony of the government over the CBI undermines the credibility of the investigation in this coal case, which involves very powerful personalities in the present government. They were either in charge of the allocation process or had influenced the said process to secure

coal blocks for their favoured entities. There has been mounting evidence in the media for the last one year as to how major corporate groups like the Jindals, and shady companies linked with powerful politicians, were able to capture huge blocks with reserves of millions of tonnes of coal. In spite of all this information in the public domain, the CBI has neither filed any charge sheet nor made any arrest.

10. Hence, in view of the nature and circumstance of the case, the petitioners had prayed for a thorough court-monitored investigation by an SIT. The petitioners had also suggested at the hearing on 12.03.2013 that this Hon'ble Court may appoint a couple of retired judges/investigators to lead the said SIT. They should be allowed to pick their own team of CBI investigators and have full access to all CBI resources. This will add to the credibility of the investigation, as it will go a long way in insulating it from political and corporate influences. The experience of a retired judge and/or a reputed investigator would be invaluable for the team of CBI officers in their investigation and would also assist this Hon'ble Court in monitoring the same. This Hon'ble Court does not have the time to go

through each and every case diary, witness statements, etc., and merely by going through periodic status reports, it would be difficult for this Hon'ble Court to come to a conclusion that the investigation is on the right track. A retired judge and/or an experienced investigator would have the time to go through each and every case file on a day-to-day basis, and would therefore be in a position to provide valuable guidance to the investigation team and assist this Hon'ble Court in monitoring the investigation.

11. The Petitioner would like to cite the case of Sahara vs. SEBI (CA 9813/2011) wherein this Hon'ble Court, keeping in view the nature of the case and the huge amount involved (Rs 24000 crores), vide order dated 31.08.2012 had appointed Justice (Retd) B. N. Agarwal, former judge of this Hon'ble Court, to supervise the actions of the SEBI in enforcing the directions of this Hon'ble Court against the Sahara group. The appointment of Justice Agarwal has emboldened the SEBI to take coercive action without fear or favour, and has also been of assistance to this Hon'ble Court in ensuring the implementation of its directions. Therefore, the Petitioners request

this Hon'ble Court to appoint an SIT comprising a couple of retired judges or investigators to supervise the team of CBI investigators on a day-to-day basis.

12. The blatant interference by the Government in the CBI investigation is not only unlawful and a criminal offence, but it also amounts to the contempt of court. A status report, which was to be filed in this Hon'ble Court, was changed and diluted at the instance of the Government which had no business to influence the investigation, especially when its own actions are the subject matter of investigation. The law officers of the Government then attempted to mislead this Hon'ble Court at the 12.03.2013 hearing. The actions of the Law Minister, PMO officials and others, therefore, clearly amount to a criminal contempt of the court. After the said hearing, the CBI officer, who was supervising the investigation and who had filed the last affidavit, was transferred. This interference with the course of the investigation also needs to be thoroughly investigated by the proposed SIT.

PRAYERS

In these circumstances the Petitioner prays that your Lordships may be pleased to pass the following directions:

- (i) Direct a thorough court-monitored investigation by an SIT into all the cases relating to the allocation of coal blocks
- (ii) Direct an investigation by the said SIT into the unlawful interference by the Government in the coal scam investigation being carried out by the CBI and the dilution of the status report filed by the CBI
- (iii) Pass other or further orders, as may be deemed fit and proper in the interest of a fair, impartial and thorough investigation in the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY
BOUND SHALL EVER
PRAY.

PETITIONERS

THROUGH

PRASHANT BHUSHAN

COUNSEL FOR THE PETITIONERS

FILED ON:

NEW DELHI