

(2011) 11 KAR CK 0218

In the Karnataka High Court

Case No : Writ Petition No. 28356/3031 (GM-RES)

Dayananda Poojary

APPELLANT

Vs

The Government of Karnataka

RESPONDENT

Date of Decision : 08-11-2011

Acts Referred:

Karnataka Civil Services (Conduct) Rules, 1966 — Rule 23 (2)

Karnataka Lokayukta Act, 1984 — Section 9

Prevention of Corruption Act, 1988 — Section 13 (1) (c), 13 (2), 19 (1) (b), 19 (1) (e)

Citation : (2011) 11 KAR CK 0218

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : T.A. Ramakrishnappa, for the Appellant; H.T. Narendra Prasad, HCGP for R1 and Sri. B.A. Belliappa, for R2, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil

1. In this writ petition, petitioner is calling in question the orders issued by the State Government vide Annexures-E and F, thereby granting sanction for prosecution of the petitioner in terms of Section 19(1)(b) of the Prevention of Corruption Act, 1988 (for short "the Act") for the offences committed u/s 19(1) (e) read with Section 13(2) of the Said Act.

2. Petitioner is a public servant working as Deputy Commissioner of Commercial Taxes. The 3rd respondent Superintendent of Police, Karnataka Lokayukta, Dakshina Kannada, conducted a search of the office and residential house of the petitioner and also the farm house belonging to his wife and seized certain documents. This was a sequel to the complaint registered against him by the 3rd respondent in Crime No. 5/2008. After the search, the petitioner was kept under suspension. He claims to have been re-instated later on by an order passed by the Karnataka Administrative Tribunal.

3. The Lokayukta Police requested the State Government vide letter dated 11.02.2011 seeking sanction for prosecution of the petitioner in terms of the provisions contained u/s 19(1)(b) of the Act. All the relevant records were enclosed to the said communication.

4. On consideration of the report submitted by the Additional Director General of Police Lokayukta, Bangalore and after taking note of the search panchanama and the materials collected against the petitioner including the nature and extent of the assets possessed by the petitioner and his wife and other family members, the State Government has come to the conclusion that the petitioner was in possession of assets disproportionate to his known source of income and therefore sanction deserved to be accorded for prosecuting him. The Government having come to the prima facie conclusion that an offence u/s 13(1)(c) read with Section 13(2) had been made out, accorded sanction for prosecuting the petitioner by a Government order dated 02.05.2011 vide Annexure-E.

5. In the order passed at Annexure-E, the date of the first information report was mentioned as 30.08.2008, whereas the correct date was 10.09.2008. In order to correct this mistake, a subsequent revised order came to be passed vide Annexure-F on 04.06.2011. It is in this background that the petitioner is calling in question both these orders whereunder sanction is accorded to prosecute him.

6. Learned Counsel appearing for the petitioner contends that the order according sanction passed by the State Government suffers from patent illegality, inasmuch as there is no application of mind to the, nature and extent of the so called disproportionate assets possessed by the petitioner. In this connection, he draws the attention of the Court to item No. 4 of the list of assets, detailed at Annexure-F and its respective value forming part of the impugned order wherein an extent of 6 acres 87 cents of land situated at Moodabidre Padukonage village is shown to have been purchased by the wife of the petitioner and its value is disclosed at Rs. 9,24,448.00, whereas the actual sale consideration paid is only about Rs. 5,32,000/- as can be demonstrated from the sale deed, copy of which is produced along with the representation. Annexure-H. He further contends that in item No. 47 of the list of assets, as against the head other expenses, a sum of Rs. 5,50,000/- is disclosed which is vague and not traceable to any specified asset thereby vitiating the conclusion reached by the State Government for according sanction. Learned Counsel further draws the attention of the Court to the proviso to Sub-Rule 2 of Rule 23 of the Karnataka Civil Service (Conduct) Rules, 1966 (for short "the Rules") to contend that the transactions entered into by the family members of the petitioner out of their own funds could not have been taken note of while according sanction for prosecution. In this regard, he submits that the property situated at Moodabidre Padukonage village is purchased by the wife of the petitioner and therefore the same could not have been taken note of while issuing the order of sanction.

7. Learned Counsel for the petitioner has placed reliance on the judgments of the Apex Court in the case of N. Gundappa v. State of Karnataka and Others AIR

1989 (3) KAR.L.J. 425 and M. Ranganarasaiah Vs. State of Karnataka and others, to contend that absence of opportunity provided to the petitioner by forwarding the complaint lodged against him to have his say in the matter vitiates the proceedings culminating in passing the impugned order of sanction. Judgment of the Apex Court in the case of Tata Cellular Vs. Union of India, is relied upon to contend that this Court is entitled to examine the illegality committed in the decision making process as any unfair and unreasonable act in exercising administrative discretion is amenable to judicial review. Reliance is also placed on the judgment in the case of Roshan Deen Vs. Preeti Lal, to contend that the look out of this Court is not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law.

8. Learned Counsel appearing for the Lokayukta Police and the learned Government, Pleader have strongly defended the impugned orders refuting the contentions urged by the petitioner. Strong reliance is placed on the judgment of the Apex Court in the case of Parkash Singh Badal and Another Vs. State of Punjab and Others, to contend that there is a distinction between the absence of sanction and the alleged invalidity of sanction on account of non-application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial. He further contends that in the instant case, as the grievance of the petitioner is with regard to non-application of mind and not with regard to the absence of any sanction against the petitioner, this question has to be urged before the Court below during the course of trial and this Court will not interfere in such matters, particularly, where allegation of corruption such as possession of disproportionate wealth by a government servant is made which is a subject matter of investigation before the Lokayukta police.

9. Having heard the Learned Counsel for the parties and on careful consideration of the entire materials on record, the only point for consideration here is whether this Court should interfere with the sanction order on the grounds urged by the petitioner in the writ petition.

10. The Apex Court in the case of Parkash Singh Badal and Another v. State of Punjab and Others, has held that the principle of immunity protects all acts which the public servant has to perform in the exercise of the functions of the Government. The purpose for which they are performed protects these acts from criminal prosecution. However, there is an exception. Where a criminal act: is performed under the colour of authority but which in reality is for the public servant's own pleasure or benefit then such acts shall not be protected under the doctrine of State immunity. In other words, where the act. performed under the colour of office is for the benefit of the officer or for his own pleasure Section 19(1) will come in. Dealing with the scope of interference with the order of Sanction, the Apex Court has held as under;

52. The sanctioning authority is not required to separately specify each of the

offence against the accused public servant. This is required to be done at the stage of framing of charge. Law requires that before the sanctioning authority, materials must be placed so that the sanctioning authority can apply his mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalized guidelines in that regard.

53. The sanction in the instant case related to offences relatable to Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial.

11. It is clear from the above that this Court will not be justified in interfering with the order according sanction only on the ground that the authority has not properly applied its mind to the details of the assets as can be found in the sale deed executed in the name of the wife of the petitioner. Such discrepancies cannot be taken note for the purpose of scuttling the trial. However, it will be open to the petitioner to raise such grounds in his defence before the Court below. Similar is the position with regard to the other contention raised by the petitioner by taking recourse to Rule 23(2) of the Rules as amended by the notification dated 16.11.2006. Whether one of the properties mentioned at Column No. 4 in the list of assets appended to the impugned order is acquired by the funds of the wife of the petitioner or whether the said fund is traceable to the funds of the Government servant himself, is a matter that cannot be gone into in exercise of the writ jurisdiction by this Court.

12. Insofar as the other contention raised regarding the lack of opportunity afforded to the petitioner by forwarding the copy of the complaint, it has to be stated that as rightly contended by the Learned Counsel for the respondent-Lokayukta, this is not a case which falls u/s 9 of the Karnataka Lokayukta Act, 1994 wherein a complaint is lodged to the Lokayukta or to the Upa-lokayukta in which event the provisions contained under Sub-Clause 3 of Section 9 providing for a preliminary inquiry to be made and the investigation to be conducted arises for consideration. In such an event, as per Sub-Clause 3(a) of Section 9, a copy of the complaint is required to be forwarded to the public servant and to the competent authority concerned and an opportunity to offer his comments on such complaint shall be afforded to the public servant under Sub-Clause (b) of Sub-Section (3). In the present case the complaint is registered by the Lokayukta Police and an investigation is conducted. This is not a case of a complaint addressed to the Lokayukta or to the Upa-lokayukta under the provisions of the Lokayukta Act. Therefore, prima facie, I am of the view that this contention urged by the counsel for the petitioner has no application to the facts of the present case. Consequently, the judgments relied upon by the counsel for the petitioner reported in M. Ranganarasaiah Vs. State of Karnataka and others, , have no application to the facts of the present case-Similarly, the other judgements cited by the petitioner are inapplicable to the facts on hand. For all

the aforementioned reasons, I do not find any merit in this writ petition. Hence, the writ petition is dismissed. However, the petitioner is at liberty to raise such contentions as are open to him before the Court below during the course of enquiry and trial which will be considered on merits and in accordance with law.

In the light of the order passed above, the question of issuing direction to the State Government to consider the representation submitted by the petitioner for revoking the order of sanction does not arise.