
(2009) 10 RAJ CK 0075
In the Rajasthan High Court

Hanuman Singh Vishnoi

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-10-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B

Prevention of Corruption Act, 1988 — Section 13, 19, 3

Citation : (2010) 1 WLN 33

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Govind Mathur, J.—The Chief Engineer, Bisalpur Project-cum- Establishment (Non-Gazetted), Department of Water Resources, Government of Rajasthan, Jaipur, while exercising powers u/s 19 of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act of 1988"), granted sanction to prosecute the petitioner for various offences punishable under the Act of 1988. The petitioner was also placed under suspension as per Rule 13(1)(d) of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (hereinafter referred to as "the Rules of 1958") by an order dated 30.5.2007. To assail validity of the orders aforesaid this petition for writ was presented before this Court on 11.6.2007, but the suspension has already been revoked on 29.8.2007 and as such now challenge survives only to the extent of approval for prosecution.

2. The factual matrix necessary to be noticed, as per the original record available, is that the petitioner while working as Junior Engineer at Munda- II submitted a complaint to the competent authority regarding an encroachment made by Shri Satpal son of Shri Madanlal upon the area closed to Masitawali Head Chak-1, NDR Canal. On 8.12.2005, above named Shri Satpal made a complaint to Anti Corruption Bureau, Hanumangarh stating therein that the petitioner is demanding illegal gratification for not removing the encroachment made by him and on basis of the complaint aforesaid a trap was planned and

organised on 8.12.2005, accordingly at about 4:30 p.m. on the same day Shri Satpal offered a sum of Rs. 2000/- to a person namely Sitaram said to be a person to whom money was to be given under instructions of the petitioner and he accepted the same. The trap party conducted usual proceedings and lodged a criminal case against the petitioner. After the incident of trap office of the Chief Engineer, Bisalpur Project-cum-Establishment (Non-Gazetted) initiated proceedings for grant of sanction for prosecution as per Section 19 of the Act of 1988. The office of the Superintendent of Police, Anti Corruption Bureau, Bikaner remitted relevant record to the Chief Engineer to consider the issue relating to grant of sanction for prosecution of the petitioner for the offences punishable under Sections 3(7), 13(1)(d), 13(2) of the Act of 1988 read with Section 120B IPC. A proposed draft sanction was also sent to the Chief Engineer, Bisalpur Project-cum- Establishment (Non-Gazetted).

3. The Chief Engineer, Bisalpur Project-cum- Establishment (Non-Gazetted) by a notice to show cause instructed the petitioner as to why the sanction as sought for be not granted. An opportunity of personal hearing too was allowed and the petitioner was instructed to appear before the competent authority for personal hearing on 6.7.2006. The competent authority after hearing the petitioner and also officers of the Anti Corruption Bureau reached at the conclusion that no case is made out against the petitioner and as such decided not to grant sanction for prosecution. While doing so the entire record was forwarded to the Chief Vigilance Commissioner as per Government of Rajasthan, Department of Personnel (Group-III) Circular dated 30.5.2001. On 15.9.2006 the matter was placed before the Secretary to the Government of Rajasthan, Department of Water Resources, who made a note "examine and put up". The Deputy Secretary, Water Resources, examined the matter and made a note as under:

I have gone through the file. Both the parties - ACB officers and the JEn. Sh. Vishnoi - are giving contradicting facts, therefore, in my view both of them should be called personally to present their case before the Secretary WR.

4. The Secretary, Water Resources on 3.10.2006 made a note that "appointing authority for J.En. is C.E. Prosecution sanction is issued by appointing authority. This matter should not come to State Government". After the noting as above the matter was again placed before the Chief Engineer, Bisalpur Project-cum-Establishment (Non-Gazetted) who made a note that as per Government of Rajasthan circular dated 30.5.2001 the competent authority is required to forward his opinion before granting or rejecting the sanction for prosecution to the Chief Vigilance Commissioner and, therefore, entire record of the case was again remitted to the Secretary, Department of Water Resources.

5. The Secretary, Department of Water Resources reexamined the matter and after detailed consideration a finding was given that the petitioner was having no role with regard to the trap made on 8.12.2005 regarding acceptance of illegal gratification as alleged by Shri Satpal. The matter then was sent to the Principal Secretary to the Government of Rajasthan, Department of Home Affairs (Chief

Vigilance Commissioner) wherein a general note was made under paras No. 110 to 113 regarding care and cautions required to be taken while refusing for grant of sanction for prosecution. The note made by the Principal Secretary, Home (CVC) on 24.2.2007 reads as follows:

110- vkt dy vk;s fnu ;g izdkf"kr gks jgk gS fd dfri; foHkkxksa esa jkT;dehZ fj"or izkIr djus ds fy, ek;/e fodflr dj fd;s gSA vfHk;kstu Lohd`fr iznku djrs le; xokgksa ds "kiFk i= csp dj c;ku ysuk bl izo`fr dks ckok nsuk A foHkkx esa iz"kklfud lwfprk vk;s ;g foHkkx ds fy, visf{kr gS] ,-lh-ch- lg;ksx@lgk;d dk jksy vnk dj ldrk gSA ijUrq ;fn vfHk;kstu Lohd`fr ds nkSjku vUos"k.k@vuqla/kku ds lkekukUrj dk;Zokgh dh tkrh gS ,oa vR;f/kd le; yxk;k tkrk gS rks bldk dke og jkT; dehZ mBk;sxk ftls Hkz"Vkp kj fyIr ik;k x;k gSA

111. ,sls dbZ ekeys vk;s gS ftues ckn esa "kiFk i= ;k "kgknr dh tkdj vfHk;kstu Lohd`fr ugh fn;s tkus ds izLrko fn;s tk jgs gS A blh izdkj vfHk;kstu Lohd`fr ds izLrko ij fu.kZ; esa Hkh vR;f/kd foyEc gks jgk gS A blls ,-lh-ch- ds iz;klks dk izHkko de gks tkrk gS ,oa vfHk;kstu izfdz;k Hkh nq"izHkkfor gksrh gSA

112- dkfeZd foHkkx }kjk bl igyw ij fn"kk funsZ"k fn;k tkuk visf{kr gS A ,slk ugh gksus ls orZeku izdj.k tSlS izdj.kksa es Hkh vfHk;kstu Lohd`fr ugh nsus ls Hkz"V jkT; dfeZ;ks dks izksRlkgu feysxkA

113. ;g Hkh visf{kr gS fd ?i? 2 ekg esa vfHk;kstu Lohd`fr ugh nsus okys l{ke vf/ kdkjh ds rdZIEer vk/kkj izLrqr djus ,oa ;fn ,slk ugh dj ikrk gS rks vuq"kk lukRed dk;Zokgh ds fy, Liable gksus ds funsZ"k fn;s tkos A ?ii? vfHk;kstu Lohd`fr ds ckn jkT; dehZ dks lsok ls fu"dkflr dj fn;k tkos A ;fn jkT;dehZ mUeksfpr gks tkrk gS rks jkT; lsok esa vk tk;sxk A blls jkT;dehZ }kjk foyEc djus ds iz;kl ij vadq"k yxsxk A ,oa ?iii? izR;sd izdj.k esa foHkkx dk ,d uksMy vf/kdkjh vUos"k.k@vUoh{kk dh leh{kk djsA

6. The Secretary, Department of Personnel also made a note in paras No. 114 to 122 and those too relate to the procedure required to be observed while considering cases for grant of prosecution as per Section 19 of the Act of 1988. After getting nothings from the Department of Personnel and Department of Home Affairs the matter was again placed before the Special Officer-cum-Deputy Secretary to the Government of Rajasthan, Department of Water Resources wherein a short note was made in the terms ^^izdj.k esa U;k;ky; ls vUoh{kk dj;k;k tkuk ;qfDr laxr jgsxkA^^ The above noting was approved by the Principal Secretary to the Government of Rajasthan, Department of Water Resources on 10.5.2007 and the matter was sent for seeking opinion of the Deputy Legal Remembrance who too made a short note for granting sanction for prosecution. The matter then was placed before the Chief Engineer, Bisalpur Project-cum-Establishment (Non-Gazetted) who granted sanction for prosecution on 29.5.2007 under the proposed format forwarded by the office of the Superintendent of Police, Anti Corruption Bureau, Bikaner. The order of suspension then was passed on 30.5.2007.

7. While assailing validity of the decision of the competent authority for granting

sanction for prosecution, the contentions of counsel for the petitioner are that (i) the competent authority has not applied his mind while granting sanction for prosecution but simply acted upon the instructions given by other officers of the State Government, (ii) the competent authority has not considered the explanation advanced by the petitioner regarding entire incident of trap taken place on 8.12.2005, and (iii) on merits too there is no case for prosecuting the petitioner for the offences punishable under the provisions of the Act of 1988.

8. Per contra, stand of the respondents is that the competent authority granted sanction for prosecution after considering material available on record and on satisfying himself that the prosecution is desirable in present set of circumstances. In reply to the writ petition the respondents also stated that an opportunity of personal hearing was accorded to the petitioner and whatever explanation given by him that was taken into consideration by the competent authority before passing the order dated 29.5.2007. By submitting a rejoinder the petitioner reiterated the facts averred in the writ petition and also placed on record certain documents to substantiate his stand.

9. Heard counsel for the parties and considered the rival contentions. The original record of entire process relating to grant of sanction for prosecution was made available by the respondents and that too is examined by the Court.

10. As per the provisions of the Act of 1988 the authority competent for grant of sanction for prosecution is the authority who is competent to remove the officer concerned from service and in the present case that is the Chief Engineer (respondent No. 2). From the original record made available by the respondents, it is apparent that the authority competent at least twice by adequate application of his mind reached at the conclusion that no case was made out against the petitioner for grant of sanction for prosecution. The first note was made by him on 15.9.2006 after considering all relevant documents, the audio tape on which the investigating agency was relying upon and also the explanation given by the petitioner. A specific finding was given by the Chief Engineer that as a matter of fact a plan was made with ulterior motives to get the petitioner trapped in a false case through the trap party of the Anti Corruption Bureau. The relevant portion of the finding given by the Chief Engineer on 15.9.2006 reads as under:

mDr nLrkostks ds voyksdu ls Li"V gksrk gS fd lacf/kr dfu"B vfHk;UrK Jh guqekuflag fo"uksbZ us viuh vksj ls mDr V?Si izdj.k ls iwoZ ugjh {ks= es gks jgs voS/k dCts dks gVkus dk iw.kZ iz;kl fd;k A pwafd dCts/kkj ml LFkku ls viuk dCtk gVkuk ugh pkgrs Fks bl dkj.k cnuh;friw.kZ rjhds ls Jh guqekuflag fo"uksbZ d-v-dks >wBs rF;ksa ds vk/kkj ij Hkz"Vkpkj fujks/kd C;ksjs dh V?Si ikVhZ ls V?Si djkus dk iz;kl fd;k ijUrQ V?Si izdj.k esa uk rks Jh fo"uksbZ d-v- }kjk fj"orh jkf"k izkIr ik;k x;k uk gh fj"orh jkf"k muds ikl ls ekSds ij cjken dh xbZA

11. After giving finding as above, the matter was placed before the Secretary to the Government of Rajasthan, Department of Water Resources who in turn specifically noted on 3.10.2006 that the issue is required to be determined by

the appointing authority i.e. the Chief Engineer and the same should not come to the State Government. However, the appointing authority forwarded the record for its placement before the Chief Vigilance Commissioner in view of Government of Rajasthan notification dated 30.5.2001. The State Government at its level again considered the matter and on 21.2.2007 a specific finding was noted that the petitioner never demanded alleged bribe nor he received the same and nothing objectionable was recovered from him. This finding was also given by taking into consideration various documents on which the investigating agency was placing reliance. The matter then was placed before the Principal Secretary to the Government of Rajasthan, Department of Home Affairs (Chief Vigilance Commissioner) who noted down certain general instructions on 24.2.2007. The instructions given by the Chief Vigilance Commissioner are general in nature and as a matter of fact, on basis of those instructions case of the petitioner would have been examined by the competent authority. Similarly, the Secretary to the Government of Rajasthan, Department of Personnel also noted in paras No. 114 to 122 certain general instructions regarding disposal of cases relating to grant of sanction for prosecution. Whatever notings made by the Chief Vigilance Commissioner, as well as by the Secretary, Department of Personal are general in nature and those are mere guidelines which are required to be observed by the competent authorities and the instructions so given nowhere considers case of the petitioner in specific terms. It is strange that the officers of the Department of Water Resources and the appointing authority i.e. the Chief Engineer (respondent No. 2) instead of considering case of the petitioner as per instructions referred in paras No. 110 to 122 granted sanction for prosecution in most mechanical manner. There is no independent application of mind by the competent authority before granting such sanction though a definite finding was given for rejecting the request for granting sanction for prosecution once on 15.9.2006 and then on 21.2.2007. Examination of the original record clearly establishes mechanical exercise of powers on part of appointing authority. This Court in *Samrath Singh v. State of Rajasthan* SB Civil Writ Petition No. 8249/2007 decided on 30.9.2009, while considering the question regarding exercise of administrative powers for placement of a civil servant under suspension in a case of his alleged involvement in a criminal case, held as follows:

provide necessary guidelines to the competent authorities for exercising powers as per Rule 13, but at the same time it is also well settled that the administrative instructions can always be given to fill up the unoccupied field, however, such instructions in no way encroach the space already under occupation of an statute. In the present case the circular dated 10.8.2001 nowhere provides instructions to the competent authority as to how powers under Rule 13 are required to be exercised, but it imposes mandate upon the discretion of the competent authority. Such imposition of a mandate over statutory discretion is not permissible under administrative jurisprudence. The State Government would have been right in providing guidelines or a mode to exercise discretion under

Rule 13 of the Rules of 1958. The State Government could have given instances and instructions to the competent authority to exercise its discretion to place an incumbent under suspension in particular circumstances but not an order to place government servant under suspension mandatorily in specific cases. It is for the competent authority to examine facts of each and every case and to settle desirability to place an incumbent under suspension by applying objective discretion. The suspension of an employee, looking to the facts and circumstances of the case may be desired urgently or on emergent basis but in those circumstances also the competent authority must record its satisfaction for exercising powers under Rule 13. If such satisfaction is not recorded and suspension is made merely on basis of the instructions given in circulars or merely by a word of mouth or by slip of pen, then that is nothing but colourable exercise of power.

12. In the instant matter the competent authority acted upon the general instructions given by the Department of Home Affairs and Department of Personnel without application of his own mind, thus, the sanction so granted is nothing but a mechanical and colourable exercise of powers and also against the thrust of Section 19 of the Act of 1988 that provides for necessity of previous sanction for prosecution in a case of a person who is employed in connection with the affairs of State and is not removable from his office save by or with the sanction of that Government. The competent authority for granting such sanction is the authority which would have been competent to remove the public servant from his office at the time the offence alleged to have been committed. As said above, in the instant matter though the sanction is granted by the competent authority but no independent application of mind by him was made before granting such sanction.

13. Accordingly, this petition for writ deserves acceptance and, therefore, the same is allowed. The sanction granted for prosecuting the petitioner by the Chief Engineer, Bisalpur Project-cum-Establishment (Non-Gazetted), Department of Water Resources, Government of Rajasthan, Jaipur on 29.5.2007 is declared illegal and, therefore, the same is quashed.

14. No order to costs.