

(1996) 01 P&H CK 0120

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 232 of 1995

Jagjit Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 18-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 173
Prevention of Corruption Act, 1988 — Section 13(2), 19, 7

Citation : (1996) CriLJ 2962 : (1996) 1 RCR(Criminal) 608

Hon'ble Judges : Sarojnei Saksena, J

Bench : Single Bench

Advocate : D.S. Rajput, for the Appellant; G.S. Gill, AAG for Nos. 1 and 2 and J.S. Chahal, For No. 3, for the Respondent

Final Decision : Allowed

Judgement

Sarojnei Saksena, J.—The petitioner, a freedom fighter, has filed this petition under Article 226 of the Constitution of India for issuing a writ, order or direction directing the respondents to submit charge-sheet u/s 173 of the Code of Criminal Procedure with regard to FIR No. 17. dated January 23, 1990, under Sections 7/13(2) of the Prevention of Corruption Act (in short, the Act) of Police Station Ropar.

2. The petitioner's contention is that he is a freedom fighter. He applied for getting tubewell electricity connection to the Punjab State Electricity Board. The office of this Board sent demand notice to him in the year 1968. When the petitioner contacted Sunder Lal Mashal, Assistant Executive Engineer, Sub Division Chamkaur Sahib, he demanded some money for getting the said electricity connection in the name of the petitioner. Initially the petitioner declined, but when said Sunder Lal Mashal did not accede to his request, he approached the department of respondent No. 2. This department arranged a trap. On January 23, 1990, the petitioner paid Rs. 500/- to Sunder Lal Mashal,

purporting to be bribe, and officials of respondent No. 2 arrested him red-handed at that very time. Sunder Lal Mashal was later on released on bail by the competent Court. Respondent No. 2 concluded the investigation in connection with the aforesaid FIR and prepared the charge-sheet, but still the respondents have not filed the charge sheet against Sunder Lal Mashal, which is prayed for. Further, despite this FIR respondent No. 3 has promoted Sunder Lal Mashal as Executive Engineer.

3. Respondents 1 and 2 have filed a joint reply, admitting that on the basis of complaint lodged by the petitioner, a trap was arranged on January 23, 1990. Since Sunder Lal Mashal accepted Rs. 500/- from the petitioner, alleged to be given as bribe, he was caught red handed. Sunder Lal Mashal was arrested and later on he was enlarged on bail by the competent Court. Respondent No. 3 held a parallel investigation and when challan papers were submitted along with a prayer to accord sanction u/s 19 of the Act, respondent No. 3 declined, though he had no authority to take into consideration this extraneous matter while taking a decision about the grant of sanction.

4. Respondent No. 3 in his reply has averred that demand notice was issued to the petitioner by Rural Electrification Corporation (R.S.C.) Sub-Division, Ropar, and Sunder Lal Mashal had nothing to do with it. Three months time was given to the petitioner for filing test report by Gurdial Singh, Sub-Divisional Officer, REC Sub-Division Ropar up to December 26, 1988. who later on verified the test report of the petitioner at site, but thereafter the Board scrapped the scheme of release of tubewell connections through REC Organisation during October 1989. Ultimately work was stopped by SDO/ REC Ropar during October 1989. Thereafter all the pending tubewell applications and test reports were transferred by REC Ropar to Assistant Executive Engineer D/S Sub Division. Chamkaur Sahib, in the month of October 1989. Ajaib Singh AEE was Incharge of this Sub-Division. Ajaib Singh issued Service Connection Order No. 151/1448 dated November 2, 1989, for release of tube well connection to the petitioner. Copy of that order is at Annexure R-1. Thus, it is averred that Sunder Lal Mashal was in no way concerned with the release of tubewell connection of the petitioner upto this stage. The Superintending Engineer, Distribution Circle. Ropar, directed Tirath Singh, Executive Engineer, Distribution Division, Ropar. to attend the work of pending test reports through Assistant Executive Engineer/Distribution Sub-Division, Ropar, and it was at that stage that Sunder Lal for the first time in November, 1989 came to be associated with the release of tube well connections in the area. Photostat copy of that order is at Annexure-R-2. Sunder Lal got prepared the group estimate from his concerned Junior Engineer Gurcharan Singh. The same was sanctioned by Executive Engineer. Distribution Division. Ropar. bearing No. 93192/89-90. Copy of this order is at Annexure R. 3. The material for erection work of line for release of connection was got drawn from store from January 5, 1990 to January 8, 1990. by his staff. A transformer for system improvement was erected by Assistant Executive Engineer, Distribution Sub-Division, Chamkaur Sahib, from where the connection of the petitioner was

to be released. This transformer was to be energised after getting approval from the Chief Electrical Inspector, Punjab, by the said Sub-Division Chamkaur Sahib vide order Annexure R-4. Thus, the work had already been completed as per statement of Junior Engineer. Gurcharan Singh and there was no occasion for Sunder Lal to have any talk with the petitioner for demanding the bribe or to accept the same. Copies of such reports are at Annexures R-5 and R-6. It is alleged that the case of according approval for the prosecution of Sunder Lal was considered by the competent authority. The case was considered in totality from all angles and the competent authority declined to accord the approval for the prosecution of Sunder Lal. The decision was conveyed to respondents 1 and 2. Further, in view of the instructions of the Board that if FIR case has not been decided within a specified period against the official, he should be considered for promotion, crossing of efficiency bar etc. after two years from the date of lodging of the FIR. In this case, as sanction for prosecution was not accorded by the competent authority. Sunder Lal was considered for promotion and he was promoted as Executive Engineer in December 1993 with the approval of the competent authority as per Annexure R-9. There is nothing on record that Sunder Lal threatened the petitioner. He has no concern with the petitioner.

5. Petitioner's counsel contends that the petitioner was to get electricity connection for his tubewell. Sunder Lal was incharge of that work. Demand notice was issued to the petitioner by the Board. When he made a request to Sunder Lal to grant him tubewell electricity connection at the earliest, the latter asked for money as bribe. Being freedom fighter, the petitioner was against that and hence as Sunder Lal did not accede to his demand of giving him electricity connection for his tubewell, he approached the department of respondent No. 2 and thereupon a trap was laid. He gave Rs. 500/- to Sunder Lal as bribe in the presence of a witness and immediately the officials of respondent No. 2 caught Sunder Lal red-handed. Officials of respondent No. 2 conducted whole of the investigation, prepared the charge sheet as well and sent all the papers to respondent No. 3 for according sanction. Petitioner's counsel further submits that till today no challan is put up against Sunder Lal, though the offence is of January 23, 1990.

6. Counsel for respondents 1 and 2 contends that after completing the investigation in connection with the aforesaid FIR, papers were sent to respondent No. 3 for according sanction, but instead of according sanction respondent No. 3 held a parallel investigation through his own employees and declined to accord the sanction. Respondents 1 and 2 have written 18 letters to respondent No. 3 for according sanction, which are enumerated in Annexure "A". Thus, according to respondents 1 and 2 they are ready to submit the charge sheet u/s 173 of the Cr.P.C. for the alleged offence against Sunder Lal, but as respondent No. 3 is not according sanction u/s 19 of the Act, they are unable to submit the charge-sheet.

7. Counsel for respondent No. 3 contended that the petitioner has made false

allegation against Sunder Lal, who is now promoted as Executive Engineer in December 1993. On a thorough enquiry respondent No. 3 came to know that Sunder Lal had nothing to do with the grant of electricity connection to the tubewell of the petitioner. Other officials were concerned with it. Therefore, as the petitioner's complaint against Sunder Lal was mala fide, sanction was not accorded.

8. Nodoubt, challan u/s 7/13 (2) of the Act cannot be submitted unless sanction u/s 19 of the Act is accorded by the competent authority. The competent authority is required to consider the challan papers, apply his mind to the facts of the case and on being satisfied that sanction should be given, he should accord his sanction. It was not for respondent No. 3/competent authority/ Director, Personnel, to judge the truth of the allegations made against Sunder Lal by calling for the record/report of his department in connection with the said matter. He had no jurisdiction to hold a parallel investigation into the allegations made against Sunder Lal. In *Indu Bhusan Chatterjee Vs. The State of West Bengal*, the Apex Court has held that "it was not for Mr. Bokil to judge the truth of the allegations made against the appellant by calling for the records of the connected claim cases or other records in connection with the matter from his office. The papers which were placed before him apparently gave him the necessary material upon which he decided that it was necessary in the ends of justice to accord his sanction." It is evident that respondent No.3/ competent authority/ Director Personnel had declined to grant sanction on a ground which he had no right to take into account; as such, his decision is a nullity. It is, thus, not a question of mere error of law but of basing a decision on a matter which, on a true construction of his powers, he had no right to do. Respondent No.3/ competent authority/Director Personnel has taken into account matters which he was not directed to do so. Their Lordships of the Supreme Court in *Union of India (UOI) Vs. Tarachand Gupta and Bros*, referred to the view of Lord Reid and Lord Pearce (in *Anisminic Ltd. v. Foreign Compensation Commissioner* (1969) 1 ASR 208 and held that a determination which takes into consideration factors which the officer has no right to take into account, is no determination.

9. In the reply respondent No. 3 has admitted that under the orders of the Superintending Engineer/ Distribution Circle Ropar, Tirath Singh, Executive Engineer, Distribution Division, Ropar, was directed to attend the work of the pending test reports through Assistant Executive Engineer/Distribution Sub-Division, Ropar, and it was at that stage that Sunder Lal for the first time in November, 1989 came to be associated with the release of tubewell connections in the area. The alleged offence is of January 23, 1990. Whether earlier Sunder Lal was associated with this work or not and how he was being approached by the petitioner for the release of tubewell electricity connection is a question of fact. But admittedly, since November, 1989 Sunder Lal was associated with the work of release of tubewell electricity connections in the area where the petitioner wanted this connection. Despite this admission, respondent No. 3/ competent authority/Director Personnel has based his decision on extraneous

considerations by ignoring relevant considerations and hence it can be regarded as an instance of abuse of jurisdiction. Thus, it is obvious that respondent No. 3/competent authority/Director personnel has dealt with above matter in a way by taking into consideration matters which were extraneous, while coming to a decision which he could not have, and this error has to be regarded as relating to jurisdiction. Respondent No. 3 competent authority, Director Pers. has misused his power as he" has exercised that power by taking into account the above-1 referred to extraneous matters and by ignoring relevant matters.

10. In Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, the Apex Court has held (at p. 546 of AIR) :-

20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article. 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

11. It seems that to protect an official of the Board, a parallel investigation was initiated at the instance of respondent No. 3 and after considering those papers, respondent No. 3 competent authority/Director Personnel declined to accord sanction for prosecuting Sunder Lal. It is nothing but a colourable exercise of power and is liable to be struck down by the Court under Article. 226 of the Constitution. If really Sunder Lal had nothing to do with the tubewell electricity connection to be given to the petitioner, the petitioner would not have lodged such a complaint and would not have got him trapped by the officials of respondent No. 2. After the trap was laid and Sunder Lai was caught red-handed, respondent No. 3/competent authority/ Director Personnel had no jurisdiction to consider whether at that point of time Sunder Lai was incharge of that work or not. It is for the competent Court to consider this aspect of the matter. The competent authority cannot carve cut a defence for such an accused and refuse to accord sanction on the ground. In the impugned order Annexure R-7 no opinion is expressed with regard to the papers submitted by respondent No. 2,

which is indicative of the total non-application of mind to the relevant facts. Hence, the impugned order Annexure R-7 is liable to be struck down.

12. Surprisingly enough, relying on the conduct and work of Sunder Lai and basing the decision on the instructions of the Board that if FIR case has not been decided within a specified period against the official, he should be considered for promotion, crossing of efficiency bar etc. after two years from the date of lodging of the FIR or one year from the date of prosecution, whichever is earlier. Sunder Lai is promoted by respondent No. 3 as Executive Engineer in December 1993. On the one hand respondent No. 3 competent authority/Director Personnel has refused to accord sanction for prosecuting Sunder Lai on extraneous considerations and on the other hand has promoted him as two years have passed. A criminal case is registered against Sunder Lai on the basis of FIR No. 17 dated January 23, 1990. As respondent No. 3/competent authority/ Director Personnel has not accorded sanction, challan could not be filed. Under these circumstances, respondent No. 3 could not have taken recourse to the above instructions of the Board to promote Sunder Lai as Executive Engineer in December 1993.

13. Considering all the above facts, the petition is allowed. Impugned order Annexure R-7 is quashed. A writ is hereby issued directing respondent No. 3 competent authority/Director Personnel to reconsider the relevant papers put up by respondent No. 2 for according sanction in accordance with the observations made herein above and to pass a speaking order within one month from the date of receipt of a copy of this order. Thereafter, when requisite sanction is accorded by respondent No. 3 competent authority/Director Personnel, respondent No. 2 is directed to put up the challan against Sunder Lai. The promotion of Sunder Lai will be subject to the decision of the said criminal prosecution.