
(2002) 07 AP CK 0113
In the Andhra Pradesh High Court
Case No : Criminal P. No. 4071 of 2000

J.V. Reddy and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 26-07-2002

Acts Referred:

Constitution of India, 1950 — Article 141
Prevention of Corruption Act, 1988 — Section 19

Citation : (2002) 2 ALD(Cri) 520 : (2002) 2 ALT(Cri) 439 : (2003) CriLJ 540

Hon'ble Judges : S.R.K. Prasad, J

Bench : Single Bench

Advocate : M.V. Rajaram, for the Appellant; C. Sadasiva Reddy, for the Respondent

Final Decision : Dismissed

Judgement

S.R.K. Prasad, J.—The petitioners who are accused 1, 2, 6, 7, 8, 10 and 14 seek for quashing of the proceedings in CC No. 12 of 1999 on the file of the Special Judge for CBI Cases, Visakhapatnam and also the proceedings in Rc. No. 20(A)/95, dated 5-12-1995 by invoking the inherent powers of this Court u/s 482, Cr. P.C.

2. A brief resume of background of facts is necessary for appreciation of the case. The Inspector of Police SPE and CBI, Vishakhapatnam, chargesheeted the petitioners and some others in respect of four purchase orders which led to loss to the tune of Rs. 3,44,800/-. They are charge-sheeted for the Offences under Sections 120(B), 420, 477(A) of, IPC and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. The same was numbered as CC No. 12 of 1999 on the file of Special Judge for CBI Cases. Vishakhapatnam. During the pendency of the petition, they filed Crl. M. Ps. 124 and 125 of 2000 in C.C. 12 of 1999 seeking for discharge and also for summoning the documents from the prosecuting agency for not obtaining the sanction within the period of three months from the concerned authority. The learned Special Judge for CBI Cases

dismissed the Criminal Miscellaneous Petitions. Aggrieved by the same, they carried the matter in revision to this Court in CrI. R.C. No. 512 of 2000. It was disposed of by my learned brother, Justice T.Ch. Surya Rao, by order dated 6-6-2000, the relevant portion of which is extracted below :

"The petitioners seek to summon the documents ultimately to show that the sanction order has not been issued by the Competent Authority within three months from the date on which papers have been placed for its perusal and for application of its mind. When the petitioners are now challenging that it has not been issued within three months, it is for the prosecution to show by any cogent evidence that it has been issued within three months or if it chooses so to convince the Court that notwithstanding that it has not been issued within three months, still the sanction order cannot be said to be vitiated, in view of Section 19, clause (4) of the Prevention of Corruption Act.

Another aspect to be addressed is about the maintainability of the revision, as against an order passed in an interlocutory application. The very maintainability of the revision is itself in doubt since it cannot be said that it is a final order or an order in the nature of intermediary, in accordance with the tests laid down by the Apex Court in Amarnath's case. Let it be clarified that since the petitioners are assailing the very sanction order any decision to be given by the Court on that will have the effect of affecting the initial cognizance taken by the Court. Therefore it is open to the petitioners to question the same at any stage since it goes to the root of the matter.

For the foregoing reasons, this Revision case is dismissed in the light of the observations made supra in the order."

Thereafter, the petitioners have invoked the inherent power vested u/s 482 of Cr. P.C. for quashing of the proceedings.

3. The learned counsel for the petitioners, Mr. M. V. Raja Ram, assails the proceedings on the ground that sanction was not obtained within three months as contemplated under the principles laid down by the Supreme Court in Vineet Narain and Others Vs. Union of India (UOI) and Another, . The petitioners have sought for quashing of the proceedings on the ground of invalidity of obtaining sanction.

4. Mr. C. Sadasiva Reddy, learned counsel appearing for the CBI having filed a counter contends that the principles laid down by the Supreme Court in Vineet Narain's case (supra) are only directions given by the Court and obtaining of the sanction beyond the period of three months does not make the sanction order as invalid. He has drawn my attention to Section 19 of the Prevention of Corruption Act, 1988 wherein it is stated that Court in appeal cannot reverse any sentence or order passed by a Special Judge in respect of the error, omission or irregularity in the sanction order obtained unless it results in failure of justice.

5. Adverting to the said contentions, it is not in dispute that one of the sanction

orders obtained was prior to the circular issued by the Central Vigilance Commissioner dated 27-11-1998 and another sanction order obtained was subsequent to 27-11-1998. The short point that falls for consideration of this Court is about the obtaining of sanction beyond the period stipulated by the Supreme Court in Vineet Narain's case (supra) and also beyond the time stipulated by the Central Vigilance Commissioner. It is necessary to quote the directions given by the Supreme Court in the aforesaid case. Paragraph 59, which is relevant, read as follows :

59. As a result of the aforesaid discussion we hereby direct as under : Central Bureau of Investigation (CBI) and Central Vigilance Commission (CVC)

1. The Central Vigilance Commission (CVC) shall be given statutory status.
2. Selection for the post of Central Vigilance Commissioner shall be made by a Committee comprising the Prime Minister, Home Minister and the Leader of the Opposition from a panel of outstanding civil servants and others with impeccable integrity, to be furnished by the Cabinet Secretary. The appointment shall be made by the President on the basis of the recommendations made by the Committee. This shall be done immediately.
3. The CVC shall be responsible for the efficient functioning of the CBI. While Government shall remain answerable for the CBI's functioning, to introduce visible objectivity in the mechanism to be established for overseeing the CBI's working, the CVC shall be entrusted with the responsibility of superintendence over the CBI's functioning. The CBI shall report to the CVC about cases taken up by it for investigation, progress of investigations, cases in which charge-sheets are filed and their progress. The CVC shall review the progress of all cases moved by the CBI for sanction of prosecution of public servants which are pending with the competent authorities, specially those in which sanction has been delayed or refused.
4. The Central Government shall take all measures necessary to ensure that the CBI functions effectively and efficiently and is viewed as a non-partisan agency.
5. The CVC shall have a separate section in its Annual Report on the CBI's functioning after the supervisory function is transferred to it.
6. Recommendations for appointment of the Director CBI shall be made by a Committee headed by the Central Vigilance Commissioner with the Home Secretary and Secretary (Personnel) as members. The views of the incumbent Director shall be considered by the Committee for making the best choice. The Committee shall draw up a panel of Indian Police Service officers on the basis of their seniority, integrity, experience in investigation and anti-corruption work. The final selection shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee, if none among the panel is found suitable, the reasons thereof shall be recorded and the Committee asked to draw up a fresh panel.

7. The Director, CBI shall have a minimum tenure of two years, regardless of the date of his superannuation. This would ensure that an officer suitable in all respects is not ignored merely because he has less than two years to superannuate from the date of his appointment.
8. The transfer of an incumbent Director, CBI in an extraordinary situation, including the need for him to take up a more important assignment should have the approval of the Selection Committee.
9. The Director CBI shall have full freedom for allocation of work within the agency as also for constituting teams for investigations. Any change made by the Director, CBI in the Head of an investigative team should be for cogent reasons and for improvement in investigation, the reasons being recorded.
10. Selection/extension of tenure of officers up to the level of Joint Director (JD) shall be decided by a Board comprising the Central Vigilance Commissioner, Home Secretary and Secretary (Personnel) with the Director, CBI providing the necessary inputs. The extension of tenure or premature repatriations of officers up to the level of Joint Director shall be with final approval of this Board. Only cases pertaining to the appointment or extension of tenure of officers of the rank of Joint Director or above shall be referred to the Appointments Committee of the Cabinet (ACC) for decision.
11. Proposals for improvement of infrastructure, methods of investigation etc. should be decided urgently. In order to strengthen CBI's in house expertise, professionals from the Revenue. Banking and Security sectors should be inducted into the CBI.
12. The CBI Manual based on statutory provisions of the Criminal Procedure code provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned.
13. The Director, CBI shall be responsible for ensuring the filing of charge-sheets in Courts within the stipulated time-limits, and the matter should be kept under constant review by the Director, CBI.
14. A document on CBI's functioning should be published within three months to provide the general public with a feedback on investigations and information for redress of genuine grievances in a manner which does not compromise with the operational requirements of the CBI.
15. Time-limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office.

16. The Director, CBI should conduct regular appraisal of personnel to prevent corruption and/or inefficiency in the agency.

II Enforcement Directorate

1. A Selection Committee headed by the Central Vigilance Commissioner and including the Home Secretary, Secretary (Personnel) and Revenue Secretary, shall prepare a panel for appointment of the director, Enforcement Directorate. The appointment to the post of Director shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee.

2. The Director Enforcement Directorate like the Director, CBI shall have a minimum tenure of two years. In his case also, premature transfer for any extraordinary reason should be approved by the aforesaid Selection Committee headed by the Central Vigilance Commissioner.

3. In view of the importance of the post of Director. Enforcement Directorate, it shall be upgraded to that of an Additional Secretary/Special Secretary to the Government.

4. Officers of the Enforcement Directorate handling sensitive assignments shall be provided adequate security to enable them to discharge their functions fearlessly.

5. Extensions of tenure up to the level of Joint Director in the Enforcement Directorate should be decided by the said Committee headed by the Central Vigilance Commissioner.

6. There shall be no premature media publicity by the CBI/Enforcement Directorate.

7. Adjudication/commencement of prosecution shall be made by the Enforcement Directorate within a period of one year.

8. The Director, Enforcement Directorate shall monitor and ensure speedy completion of investigations/adjudication and launching of prosecutions. Revenue secretary must review their progress regularly.

9. For speedy conduct of investigations abroad, the procedure to approve filing of applications for Letters Rogatory shall be streamlined and, if necessary, Revenue secretary authorised to grant the approval.

10. A comprehensive circular shall be published by the Directorate to inform the public about the procedures/systems of its functioning for sake of the transparency.

11. In-house legal advice mechanism shall be strengthened by appointment of competent legal advisers in the CBI/Directorate of Enforcement.

12. The Annual Report of the Department of Revenue shall contain a detailed

account of the working of the Enforcement Directorate.

III Nodal Agency

1. A Nodal Agency headed by the Home Secretary with Member (Investigation), Central Board of Direct Taxes, Director General, Revenue intelligence, Director, Enforcement and Director, CBI as members shall be constituted for coordinated action in cases having politico-bureaucrat-criminal nexus.
2. The Nodal Agency shall meet at least once every month.
3. Working and efficacy of the Nodal Agency should be watched for about one year so as to improve it upon the basis of the experience gained within this period.

IV Prosecution Agency

1. A panel of competent lawyers of experience and impeccable reputation shall be prepared with the advice of the Attorney General. Their services shall be utilised as prosecuting counsel in cases of significance. Even during the course of investigation of an offence the advice of a lawyer chosen from the panel should be taken by the CBI/Enforcement Directorate.
2. Every prosecution which results in the discharge or acquittal of the accused must be reviewed by a lawyer on the panel and on the basis of the opinion given, responsibility should be fixed for dereliction of duty if any, of the officer concerned. In such cases, strict action should be taken against the officer found guilty of dereliction of duty.
3. The preparation of the panel of lawyers with the approval of the Attorney General shall be completed within three months.
4. Steps shall be taken immediately for the constitution of an able and impartial agency comprising persons of unimpeachable integrity to perform functions akin to those of the Director of Prosecutions in U.K. On the constitution of such a body, the task of supervising prosecutions launched by the CBI/Enforcement Directorate shall be entrusted to it.
5. Till the constitution of the aforesaid body. Special Counsel shall be appointed for the conduct of important trials on the recommendation of the Attorney General or any other law officer designated by him"

In clause (15) under Central Bureau of Investigation (CBI) And Central Vigilance Common (CVC), the Supreme Court stated as follows :

"Time limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office"

The Supreme Court stated in the beginning of paragraph 59, that "As a result of

the aforesaid discussion, we hereby direct as under. It is clear that the Supreme Court has given a direction to the Government to follow the guidelines as there is no law or guidelines found in respect of the passing of sanction orders within a particular time. Hence, the Supreme Court fixed the time limit for grant of sanction orders to be passed by the concerned authority.

6. It is contended by the learned counsel for CBI, Mr. C. Sadasiva Reddy, that directions are not mandatory and only directory in nature. But, when there is vagueness in law or lacunae, the Supreme Court is entitled to issue necessary directions to the Government till such time Government frames guidelines or rules. This has been done by the Supreme Court. In this case, the directions issued by the Supreme Court have got binding force over all the Courts of this country and the Government, till rules are framed in pursuance of the guidelines or directions issued by the Supreme Court since they are being issued by virtue of the powers vested in the Supreme Court under the Constitution. It is equal to law of the land pursuant to the directions given by the Supreme Court, the Central Vigilance Commission in its proceedings No. 8(1)(h)/98(3), dated 27-11-1998 issued the following directives.

"Sub : Sanction of Prosecution.

The Central Vigilance Commission while reviewing the overall functioning of the Vigilance administration of the Departments/ Organisations has observed that one of the methods of improving the vigilance function is to give prompt clearance for sanction for Prosecution under the Prevention of Corruption Act. The Supreme Court has also in the case of Vineet. Narain and others v. Govt. of India directed that a time limit of 3 months in grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General or any other Law Officer in the AG's Office. Subsequently, the Commission had also issued instructions vide its letter No. 98/VGL/7, dated the 12th March, 1998, directing all Ministries/Departments/Organisations to furnish their comments on CBI reports within 30 days of the receipt of CBI reports in respect of prosecution and disciplinary cases. Notwithstanding these directions/instructions, delays on the part of the disciplinary/administrative authorities in the cases of sanction of prosecution continue to exist.

2. The Central Vigilance Commission Ordinance, 1998 u/s 8(1)(f) directs that the power and function of the CVC will be :

"to review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988".

3. Therefore, in exercise of powers conferred on CVC u/s 8(1)(f) in conjunction with Section 8(1)(h) of the CVC Ordinance, 1998, it is hereby directed that :

"(1) In respect of CBI reports/cases in which the Commission's advice is not necessary, the competent authorities may exercise their mind and give or refuse

sanction for prosecution under the P.C. Act within the time-limit of 30 days from the date of receipt of request from CBI, and

(ii) In respect of the cases of Presidential appointees, in which the Commission's advice is required, the competent authorities may furnish their comments within 30 days to the Commission and give the sanction of prosecution or otherwise, within a period of 60 days from the date of receipt of request from CBI."

4. If at the end of the above said time limits no decision had been given by the competent authorities, then the CVC will take an adverse view and deem it as a case of misconduct on the part of the competent authority.

5. This comes into force with immediate effect."

These rules have come into force from 27-11-1998. The impugned sanction orders are not before the Court. It is clear from the decision of the Supreme Court that directions given are mandatory and have to be followed strictly. Moreover, one of the sanction orders is stated to have been issued beyond 27-11-1998, as can be seen from the charge-sheet. It has to be seen as to what is the effect, if sanction orders are not issued as per the guidelines or within the period stipulated by the Central Vigilance Commissioner. Issuing of sanction is contemplated u/s 19 of the Prevention of Corruption Act, 1988. It is necessary to advert to Section 19 before making further discussion. Section 19 of Prevention of Corruption Act reads as follows :

"Section 19. Previous sanction necessary for prosecution--

(1) No Court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction."

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under Sub-section (1) should be given by the Central Government or the State Government or any other authority: such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure,

1973.--

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in the sanction required under Sub-section (1), unless in the opinion of that Court a failure of justice has in fact been occasioned thereby:

(b) no Court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under Sub-section (3) whether the absence of or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation :-- For the purposes of this Section :--

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

A close scrutiny of the said Section shows that no time-limit is prescribed for granting of sanction order under the provisions. It is only the Supreme Court that fixed the time-limit for granting of sanction order in the aforesaid decision. Pursuant to the same, the Vigilance Commissioner has fixed his own time-limit for issuing sanction orders. The statute does not contemplate of issuing sanction orders within a particular period of time. At best, the circulars and directions issued by the Vigilance Commissioner only amount to departmental instructions given to them. For violation of departmental instructions, accused cannot complain if a departmental officer fails to attend to his duty or does not perform his duty within the stipulated time, he is liable for departmental action. When statute does not prescribe a time-limit for sanction orders, the accused cannot take advantage of the departmental rules. He can complain against the officers by their lethargy and neglect of duty, which may lead to initiation of departmental enquiry against them and consequent punishment. When Supreme Court Wanted three months" time to be fixed for issuing the sanction orders the Vigilance Commissioner fixed only one month"s time. The moment the Vigilance Commissioner fixed the time, the directions of the Supreme Court will not be in operation as necessary rules are framed for fixing the time-limit by the Department. In that view of the matter, the Supreme Court directives hold good

only up to the time the lacunae is filled up by the Department by framing the rules. The directions given by the Vigilance Commissioner have to be viewed and considered in that angle. Non-fixing of the time in the statute for issuing sanction orders will only lead to one conclusion. The failure to issue sanction orders within the time-frame does not render the sanction orders invalid or void. I have already stated that for violation of departmental instructions, the sanction order cannot be declared as void. In fact, my learned brother, Justice T. Ch. Surya Rao, has considered this aspect and observed that Section 19(4) is a bar to question the sanction orders unless there is failure of justice. It is too early and premature to decide by this Court that there is failure of justice even before recording of evidence. This Court is under handicap as the sanction orders are not produced before this Court. Without looking into sanction orders, it cannot be said by this Court that the sanction orders obtained are irregular or illegal. That has to be relegated for trial. These aspects are considered by the High Court in Criminal Revision. Petition No. 512 of 2000. This Court has to restrain itself to interfere as it has already been adjudicated under revisional jurisdiction. Whenever revisional Court deals with the case the Court must be slow in exercising inherent powers once again since the revisional court has got access to all the facts and considered the same and there is no need for second review by exercising the inherent powers. This is one such case, where this Court must be slow in interfering with the Orders passed by the lower Court, lest, it may amount to sitting in appeal over the revisional orders passed by this Court. The other contention's regarding the validity of the sanction orders, whether there is failure of justice due to delay in obtaining sanction orders, and other contentions raised in the counter and canvassed by the learned counsel for CBI can only be considered during trial after evidence, moreso, in a case where the CBI refused to produce original sanction orders and file into the Court for its perusal. One of the sanction orders are not issued as per the time-limit prescribed by the Supreme Court and there are no directions given by the Vigilance Commissioner at that time. The validity of the same has to be considered once again by the trial Court after recording of the evidence and perusal of the sanction orders. In that view of the matter, it is not a fit case where inherent powers can be exercised to quash the proceedings and that too, in a case, where the sanction orders do exist and when time-limit is not prescribed for sanction order by the statute u/s 19 of Prevention of Corruption Act, 1988. All these matters have to be left for trial. This Criminal Petition is liable to be dismissed and is accordingly dismissed. However, the lower Court is directed to consider all the contentions raised by the petitioners and respondent during trial uninfluenced by the observations made by this Court while keeping in view the provisions of Prevention of Corruption Act, 1988, as well as the principles laid down by the Supreme Court in the aforesaid decision.