
(2010) 09 PAT CK 0166
In the Patna High Court
Case No : Criminal. W.J.C. No. 425 of 2008

Lalan Prasad Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Citation : (2011) 4 RCR(Criminal) 700

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—Petitioner Lalan Prasad Singh has preferred the present petition for quashing the order sanctioning his prosecution which is dated 12-2-2007, contained in Annexure-10, in respect of R.C.-09(A)/2001-PAT, pending in the Court of the learned Special Judge, C. B. I., North Bihar, Patna.

2. The petition was heard by a learned single Judge of the Court and while passing the order dated 18-11-2008, the learned Judge, after noticing the facts of the case and some of the laws governing the field of sanctioning prosecution under the Prevention of Corruption Act, directed placing of the present petition before a Division Bench of the Court, for deciding as to :-

(i) Whether refusal to grant sanction, as contained in Annexures-7, 8 and 9, were mere opinions and thus, were covered by an earlier decision of the Court in Om Prakash Vs. The Union of India and Others, or

(ii) whether they formed decisions and thus could not come within the ambit of Om Prakash case. This is on account of the above reference made by the learned single Judge that the petition has been heard by us and the same is being disposed of by the present order.

3. Annexures-7, is the letter C-No. Vig-3/26/2003/5177 dated 12-12-2003 from the Commissioner, Central Excise, Patna, which was addressed to the Additional Director General, Directorate General of Vigilance, Customs and Central Excise, Kautilya Marg, New Delhi, in response to their letter F. No. 557/16/2001/2930 dated 27-10-2003. Annexure-8 is letter of Commissioner, Central Excise, Patna

being No. C. No. VIG-3/26/2003/3030 dated 26-10-2004 in response to letter F. No. 577/16/2001/3627 dated 14-10-2004 also of the Director General of Vigilance. Annexure 9 is also a letter of Commissioner, Central Excise, Patna in response to letter F. No. V.557/16/2001/3336 dated 9-6-2005 again of the Additional Director General (Vigilance), Customs and Central Excise, New Delhi. Annexure 10, which is sought to be quashed through the present petition, is an order dated 12-2-2007 passed by the Commissioner, Central Excise, Patna, sanctioning prosecution of the petitioner in R. C- 09(A)/2001 Pat while he was posted as Superintendent of Excise, Begusarai, and on the date of passing the sanction order was acting in the same capacity at Central Excise Division, Patna.

4. The facts of the case may briefly be noticed. It was alleged against the petitioner that within a period ranging from 1-1-1984 to 16-7-2011, he acquired movable and immovable properties to the tune of Rs. 21,50,447/- as against his total known earnings of Rs. 12,28,280/-. After making necessary deductions to the tune of 1/3rd of Rs. 12,28,80/- the savings of the petitioner would come to about Rs. 6,72,399/- which was disproportionate to his known sources of income and for which he did not furnish satisfactory explanation.

5. The petitioner during the course of investigation as also after the close of it, besides, at the stage of consideration of the issue of granting sanction for prosecuting, made several representations, as may appear from Annexurs-7, 8, 9 and 10 for consideration of the C. B. I. which was investigating the case as also to the authority competent to sanction his prosecution and submitted that the calculations made by the C.B.I. on disproportionate assets which was allegedly acquired by the petitioner, was all wrong and motivated inasmuch as they added up the assets of the petitioner's relatives, such as, his mother-in-law, father-in-law, his wife and others who all had acquired their own personal properties by different means and, as such, his assets never exceeded his known source of income and the allegation of acquiring disproportionate assets through foul means was motivated and false. The petitioner pleaded many facts including the fact that the Inspector of C.B.I., namely, Pravin Kumar was investigating the case and wanted illegal gratification from the petitioner which was not paid to him and, as such, he created non-existent evidences so as to bolstering up the case of the C.B.I. The said Pravin Kumar Inspector was later on trapped in a case of bribery by the C. B. I. itself in Delhi.

6. It appears that the defence statement of the petitioner was not accepted by the C. B. I. and they noted that the income of his wife allegedly earned out of embroidery, etc. was fake. Likewise, the recovery of Rs. 1,00,000/- from his house which was claimed by his two relatives, namely, Shri Raj Kumar Singh and Shri Amarnath Singh. The ornaments of Rs. 1,99,176/-, which as per petitioner belonged to his other relative, Smt. Subhadra Devi, and further several investments in the names of various persons which was explained by the petitioner, as may appear mentioned in Annexure-7 in items Nos. to (v), as per the C. B. I., were assets of the petitioner and, as such, the Superintendent of

C.B.I. presented the facts before the Director General of Central Vigilance Commission (CVC) for seeking the order of sanction for prosecuting the petitioner, undisputedly, a public servant.

7. Annexure-7 indicates that the Director General of Central Vigilance Commission sought comments of the Commissioner, Central Excise, Patna, by his letter F. No. 557/16/2001/2930 dated 27-10-2003 and those comments were furnished by the then Commissioner of Central Excise, Patna, by Annexure-7 which is his letter bearing C. No. Vig. 3/26/2003/5177 dated 12-12-2003. While submitting his comments, the Commissioner, Central Excise, Patna indicated that in making calculations on different properties allegedly amassed by the petitioner by foul means, it appears that the petitioner had not shown in his income tax returns some income from landed properties measuring about 2.75 acres belonging to his Hindu undivided family and for that the explanation was submitted by the petitioner. The Commissioner, Central Excise, Patna reported to the Additional Director General of Vigilance, Customs and Central Excise that since the disproportionate income was below 10 per cent, as such, it was not a fit case for sanctioning prosecution. While expressing the above opinion, the Commissioner, Central Excise, Patna, at the same time, sought for the guidance from the Directorate General, Vigilance of Customs and Central Excise, New Delhi, and requested him for seeking the views of the C.B.I. on the representation of the charged officer. Thus, what is found after perusal of annexure-7, that whole processing of the request of the C.B.I., in the opinion of the Commissioner, Central Excise, Patna, it was not a fit case for sanctioning the prosecution of the petitioner.

8. As regards Annexure-8, on perusal of the same, I find that it was yet another reply to letter F. No. 557/16/2001/3647/dated 14-10-2004 received by the Commissioner, Central Excise, with reference to the office memorandum from Shri Ashok Lakhanpal, Director, Central Vigilance Commission vide their letter No. 003/CEX/052/7110 which was also seeking some comments on some factual and legal aspects of the matter contained in different paragraphs of the letter of the Director General of Vigilance. It appears that the Commissioner of Central Excise while responding to the queries contained in the above noted letter of the Director General of Vigilance replied to different paragraph and contents thereof by making factual and legal submissions, as regards the question of sanction. He also expressed some personal opinion about the reputation of the petitioner as an Officer of the Excise Department. While so clarifying the points raised by the Director General of Vigilance and the Central Vigilance Commission, the Excise Commissioner discussed the reported decisions of the Federal Court, Supreme Court and different High Courts and, thereafter, pointed out that the power to sanction prosecution was vested in the departmental heads and that was never to be an automatic formality, but a solemn and sacrosanct act, which afforded protection to Government servant against frivolous prosecution and must, therefore, be strictly complied with before any sanction for prosecution is granted. Thereafter, the Commissioner in paragraph 3 of annexure-8 went on to

discuss the facts of the case as propounded by the C. B. I. and pointed out the loopholes in presentation of those facts. In that very course, the Commissioner in para 3(b) of his order held that claim of Central Bureau of Investigation for prosecution, considering the materials collected during investigation is unfounded and nothing but an after thought unsupported by any legal provisions, documentary evidence as well as judicial provisions. There is no adverse report of Income Tax Department on the return submitted by Smt. Bharti Singh wife of petitioner; rather the Bar Council has also acknowledged the stand of Smt. Singh as regards declaration made by the Income Tax Department.

9. The Commissioner, Central Excise, has also discussed the role of sanctioning authority while considering the proposal for sanctioning of prosecution. Dealing with allegation in paragraphs 4 and 5 of the order he also enumerated the legal provisions relevant for consideration in such matters, placing reliance on decision reported in Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, He also discussed the opinion of his predecessor Sri. S.S. Rana contained in Annexure-7, who also held similar opinion that there is nothing to make out a case for sanctioning prosecution. However, the respondent No. 2 while expressing his opinion against sanctioning for prosecution, left the matter to be examined by D. G. Vigilance, Central Board of C. B. E. C. The representation of the petitioner was forwarded to D. G. Vigilance along with Annexure-8. The final opinion of the Commissioner, Central Excise was contained in paragraph 16 of Annexure-8, simply indicating that he was fully in agreement with the findings of Shri Rana that it was not a fit case for sanctioning prosecution of the petitioner.

10. So far as Annexure-9 is concerned, it was yet another letter under the signature of the Commissioner, Central Excise, Patna in response to letter No. V557/16/2001/336 dated 9-6-2005 in which it was submitted that it was true that the petitioner had not shown his agricultural income in his income tax returns, but unfortunately, the C.B.I. failed to appreciate that the petitioner had already disclosed the details before the department about his agricultural land through IPR returns. However, taking into account the issue in its totality, the Commissioner, Central Excise, Patna once again reiterated that the above lapse could be enough for initiating minor penalty proceedings under the Rules of the Central Civil Services (CCA) Rules, 1965 and the same will match with the gravity of misconduct of the petitioner. However, while making a short point through Annexure-9, the Commissioner, Central Excise, Patna did not touch upon the ground/opinion of granting sanction prosecution to prosecute the petitioner, though she was of the opinion that there was no disproportionate assets case under the facts and evidence available on record.

11. Annexure 10, the document which is sought to be quashed through the present petition, in form and substance, is the order sanctioning prosecution of the petitioner in R.C.-09(A)/2001/Pat.

12. It appears that while passing the order the Commissioner, Central Excise, Patna observed in it-

(i) that on three different earlier occasions, his predecessors did not find it fit for granting sanction, and

(ii) that the matter regarding the sanction of prosecution was reconsidered by him in the light of letter dated 18-1-2007 of the Director General of Vigilance, Customs and Central Excise, New Delhi, contained therein in the Department of Personnel and Training's advice dated 30-10-2006.

13. However, in spite of having noticed the above two aspects the Commissioner, Central Excise, Patna, sanctioned the prosecution of the petitioner by Annexure-10 as he was of the opinion that it required to be recorded that the acts of the petitioner constituted offences punishable under the relevant sections of law, i.e., Section 5(2) read with Section 5(1)(c) of Prevention of Corruption Act, 1947 corresponding to the Sections 13(2) and 13(1)(c) of the said Act, 1988.

14. The petitioner's whole attempt before us was that on account of the finding recorded in the sanctioning order Annexure-10 itself to the effect that on three earlier occasions the same sanctioning authority had refused to grant sanction for the prosecution of the petitioner and there being no power of review vested in such sanctioning authority, the order contained in Annexure-10, sanctioning prosecution of the petitioner was bad in law. In support of the contention, a decision of the Supreme Court in *Mansukhlal Vithaldas Chauhan Vs. State of Gujarat*, was placed before us in addition to another decision of the Supreme Court in *State of Punjab & Anr. v. Mohammed Iqbal Bhatti*, reported in 2009(3) R.C.R. (Criminal) 861 : 2009 (4) R.A.J. 605 : 2010 AIR SCW 1186. It was contended that Annexures-7 and 8 were definitely the orders passed on serious application of mind by the sanctioning authority and on such application to the facts of the case and law governing the field of sanctioning prosecution, two successive Commissioners refused to sanction prosecution of the petitioner. As regards Annexure-9 it may be that there was no mention in clear terms that sanction was being refused, but the implied inference of the Commissioner recorded in Annexure-9 appears on the same line as if there were no requirements of sanctioning the prosecution which in terms was refusing to sanction the prosecution of the petitioner. It was contended that Annexures-7, 8 and 9 were orders repeatedly refusing granting sanction to prosecute the petitioner and were not covered by *Om Prakash* (supra) and, as such, Annexure-10, the order granting sanction to prosecute the petitioner was falling foul of the Supreme Court decision cited above.

15. The Counsel appearing for the C.B.I. and the Central Excise Commissioner we're unanimous in submitting that Annexures-7, 8 and 9 were opinions and comments which were exchanged between the Central Vigilance Commissioner and the competent authorities of the Customs and Central Excise and they were simply containing expression of opinion as regards the merits of the matter in the light of the procedure set down for granting sanction to prosecute and, as such, they could not be said to be orders refusing to sanction for prosecution of the petitioner. It was contended that Annexure-10, as such, could be said to be

containing a wrong record of fact that at three different earlier occasions, three different predecessors of the Commissioner of Customs and Central Excise, Patna, had refused to sanction prosecution. But, the order contained in Annexure-10 could not be quashed as it may be found that Annexures-7, 8 and 9 could never be equated to orders refusing sanction for prosecution of the petitioner, when one considers a huge change in the policy of sanctioning prosecution of a public servant under the Prevention of Corruption Act.

16. The question of sanctioning the prosecution of an Officer or employee of any department for committing offences under the Prevention of Corruption Act or under allied provisions of the Indian Penal Code has been considered from time to time by various Courts including the Apex Court and the law which has been laid down has succinctly been reiterated by the Supreme Court in *Mansukhlal Vithaldas Chauhan Vs. State of Gujarat*, Besides, the same question was also considered by the Supreme Court in *Mohammed Iqbal Bhatti's case* (AIR 2010 SCW 1186) (supra) and the same view was expressed in that judgment also. In fact, *Md. Iqbal Bhatti case* was placing reliance upon *Mansukhlal Vithaldas Chauhan*. It has been held by the Supreme Court in *Mansukhlal Vithaldas Chauhan Vs. State of Gujarat*, as follows : (Para 19 of AIR)

Since the validity of "sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Sine the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution.

In *State of Punjab & Anr. v. Mohammed Iqbal Bhatti*, (AIR 2010 SCW 1186) (supra), the Supreme Court in paragraph 7 was pointing out as follows :

Although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. It is, however, beyond any cavil that while passing an order for grant of sanction, serious application of mind on the part of the concerned authority is imperative. The legality and/or validity of the order granting sanction would be subject to review by the criminal Courts. An order refusing to grant sanction may attract judicial review by the Superior

Courts. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidences must be considered by it. The sanctioning authority must apply its mind on such material facts and evidence collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidences may be placed before the Court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. It is also well settled that the Superior Courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered." (Para 7 of AIR SCW)

In Mohammed Iqbal Bhatti, (AIR 2010 SCW 1186) as also in Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, the sanctioning authority had refused to sanction the prosecution of the accused persons. In Mansukhlal Vithaldas Chauhan the sanctioning authority had earlier refused to grant sanction to prosecute the accused-appellant before the Supreme Court while in the case of Mohammed Iqbal Bhatti, the State Government which had earlier refused to grant sanction, revised its order and sanctioned the prosecution of Md. Iqbal Bhatti who was the Block Development Officer and Panchayat Officer and was sought to be prosecuted under Sections 7 and 13(2) of the Prevention of Corruption Act. In Md. Iqbal Bhatti, the Supreme Court was of the view, as may appear from the above extracted paragraph, that exercise of power subsequently, after having earlier refused to grant sanction to prosecute was, as a matter of fact, a review and in spite of there not being any express power of review in the State Government, it was not necessary to be there inasmuch as the power to grant or refuse sanction was administrative in character. Thus, what was pointed out in Md. Iqbal Bhatti was that the State Government or the sanctioning authority may at some later stage review its own order. But, what was necessary for exercising such power of review at a later stage after having earlier refused to sanction the prosecution was that there must be production of fresh materials and evidences requiring the earlier rejection order to be reviewed. The fresh materials and evidences should not be extraneous to the fact of the case. It must be relevant to it. What follows from above cited decisions is that while considering the question of according or not according sanction for prosecution of any public servant, if the competent authority was applying its mind to the facts of the case, it has to do it by confining such serious application of mind only to the relevant facts and evidences of the case and has not to be influenced by any extraneous evidence or material. Considering any extraneous evidence or material may vitiate the order sanctioning prosecution. In my considered view, the competent authority if passes an order refusing to grant sanction to prosecute a public servant and if it is found that he considered any extraneous, irrelevant evidence or material then the order refusing to sanction prosecution may not be upheld and an appropriate writ in the form of mandamus

may be issued directing the authority to pass the order of sanctioning prosecution.

17. If one goes by the above judgment of the Supreme Court in *Md. Iqbal Bhatti*, (AIR 2010 SCW 1186) so as to deciding the present petition then one has always to accede to the prayer of the petitioner that the competent authority having refused to grant sanction for prosecution of the petitioner on three earlier occasions on same facts and evidence, could never have passed the order contained in Annexure-10 and could very well quash it, but for the reasons just following.

18. The very history of establishing the C. B. I. may indicate that during the World War II, the Britishers who were ruling India found instances of corruption in supply of different articles to the Indian Army and those supply and corrupt practices found by them relatable to the railways also. As such, they, in the year 1941 issued an executive order establishing the Special Police Establishment with a D. I. G. as its head, to investigate the cases of corruption in transactions with which the war and supply department was concerned. By another executive order issued in 1942, the activities of the Special Police Establishment were extended to the cases of corruption in railways because they were vitally found indulging in supply of the above materials. In 1942 itself, an Ordinance was issued by the Government of India creating the Special Police force vesting powers in it to investigate offences in connection with corruption in the Government departments throughout India. Need was also felt of a Central Government agency to investigate cases of bribery and corruption even after war, hence another ordinance was promulgated in 1943 which was to expire on the 30th September, 1946 for investigating into the instances of corruption and before expiry of the ordinance the Delhi Special Police Establishment Ordinance was issued on the 30th September, 1946. In the same year, the Delhi Special Police Establishment Act was enacted under Sections 5(2) and 6 of which the Central Bureau of Investigation (C. B. I. for short) derive powers to investigate certain class of offences. By the passage of time and eruption of intricate nature of offences involving important public servants in corruption as also eruption of offences of economic nature, the powers to investigate under the Delhi Special Police Establishment Act was extended to the C. B. I. to those class of cases too. Besides, some special nature of crimes under the Indian Penal Code were included, by the passage of time and the requirement of the society, as a topic on which the C. B. I. could be investigating the allegations. But those class of cases could be investigated only when the Central Government had consented investigation by the C. B. I., even in a case which was falling within the subject of the State. This probably could give a resume of establishing the C. B. I. and its power to investigate the offences under the Prevention of Corruption Act and those under different enactments.

19. With rising development and expansion of the Government and its wings, instances of corruption also started appearing quite frequently and it appears

that this necessitated the Government of India through its Home Department which was previously the custodian of granting or refusing the order to sanction prosecution of a public servant, to create the Central Vigilance Commission. It was initially through the resolution of the Ministry of Home Affairs, Govt. of India, bearing No. 24/7/64 AVD-I dated 11-7-1964 by which the Central Vigilance Commission was established on the recommendation of a Committee which was chaired by Shri K. Santhanam. The Govt. of India defined the powers and functions of the Vigilance Commission and those functions included the case of inquiry or investigation to be made into :

(a) any complaint that a public servant had exercised or refrained from exercising his powers for improper or corrupt purposes and

(b) any complaint of corruption, misconduct, lack of integrity or other kinds of malpractices or misdemeanour on the part of a public servant including members of the All India Services even if such members are for the time being serving in connection with the affairs of a State Government.

For the above purposes, the Central Vigilance Commission (CVC, for short) was empowered by the above noted resolution of the Ministry of Home Affairs, Govt. of India, to ask the C.B.I. to register a regular case and investigate it or to entrust, the complaint, information or case for inquiry to the C.B.I. or to the Ministries/Departments/undertakings concerned. In case the complaint was being investigated into on the directions of the CVC by the C.B.I., the C. B. I. was required to forward to the Ministry of Home Affairs, through the Commission, the final report in all cases investigated by the bureau in which it considered that the prosecution was to be launched, provided that sanction for such prosecution, if required under any law to be issued in the name of the President of India, the C. B. I. had to simultaneously send a copy to the Ministry/Department/undertaking concerned for any comments which it may wish to forward to the Commission. After receipt of connected relevant records and the comments from the concerned Ministry/Department/Undertaking, the CVC was to examine the case and after considering all relevant materials was to decide whether the materials produced before it required prosecution and if it found it desirable, then it could request the Ministry of Home Affairs to issue sanction which, accordingly, was to be issued by the Ministry of Home Affairs. But, this procedure was valid only when a public servant was removable from his office by the order of the President of India. In other cases, the C.B.I. would place the materials before the CVC which after considering the same would recommend to the appropriate authority for appropriate action to be undertaken. The above was the procedure set down by the first resolution of the Ministry of Home Affairs, Govt. of India, noted above by which the CVC was set up.

20. It appears that by the passage of time desirability was felt to create a statutory body than the body which was created by the executive order which was issued under Article 166 of the Constitution of India. Accordingly, efforts were made in the above behalf and, for the first time, an ordinance, i.e., the

Central Vigilance Commission Ordinance was promulgated by the President of India on 8-1-1999 which was making the above noted resolution of the Ministry of Home Affairs, Govt. of India, bearing No. 24-7-1964-ADV-I dated 11-2-1964 a part of the ordinance, as may appear from the provisions of Sections 24 of the ordinance. Subsequently, a full-fledged Act was brought forward by the Parliament by Act No. 45 of 2003 which was published in the Gazette of India extraordinary, Part II Section I, on 12-9-2003. On a perusal of Section 24 of the CVC Act, it could be found that the above noted Home Ministry resolution dated 11-2-1964 was revalidated and made part of the scheme of the Act inasmuch as it was validating all actions or discharge of functions by the earlier CVC created by that particular notification of the Ministry of Home Affairs as if it were done by the CVC created by the CC Act, 2003.

21. Before enactment of CVC Act, 2003, the above noted notification of Ministry of Home Affairs bearing No. 24-7-1964-AVD-I, dated 11-2-1964 was amended by a resolution of the department of Personnel and Training (DOP & T) bearing No. 134/2/85-AVD-I dated 19-1-1987 which runs as under :

On being satisfied that it is necessary in the public interest so to do, the Government of India have decided that paragraph 2 of the Government of India Resolution No. 24-7-64-AVD dated the 11th February, 1964, as amended from time to time, shall stand further amended with immediate effect, as indicated below, namely:

(a) For clause (vi) of Para 2, the following shall be substituted, namely : -

(vi) The Central Bureau of Investigation shall forward to the Commission the final report in all cases investigated by the Bureau in which it considers that a prosecution should be launched against a public servant and sanction for such prosecution is required any law to be issued in the name of the President. The Bureau shall simultaneously send a copy of such report to the Ministry/Department concerned which shall forward its comments on the report to the Commission.

(b) for such-clause (a) (vii), the following shall be substituted, namely :-

(a) the Commission shall, after examining the case and considering any comments received from the concerned Ministry/Department, advise the Ministry/Department concerned whether or not prosecution should be sanctioned. Sanction for prosecution shall thereafter be issued by the Ministry/Department concerned.

The above notification of the DOP & T was again amended by adding up some more guidelines to it so as to enlarging the jurisdictions of the CVC in discharge of its functions on grant or refusal of sanction for prosecution of a public servant under the provision of the previous notification which was of even No. dated 17-10-1986 which runs as under: "DOP & T O. M. No. 134/2/85-AVD-I dated 17-10-1986 The work relating to accord of Central Government's sanction for

the prosecution of any person in a case investigated by the Central Bureau of Investigation which was centralized in the Department of Personnel & Training, has since been decentralized and vested in the Ministry/Department concerned vide Cabinet Secretariat's Notification No. CD-828/86, dated 30th September, 1986.

2.1. The Central Bureau of Investigation recommended prosecution of persons only in those in which they find sufficient justification for the same as a result of the investigation conducted by them. There are adequate internal controls within the CBI to ensure that a recommendation to prosecute is taken only after a very careful examination of all the facts and circumstances of the case. Hence, any decision not to accord sanction for prosecution in such cases should, therefore, be for very valid reasons.

2.2. The following guidelines may be kept in view while dealing with cases of sanction of prosecution :

(i) In case in which the sanction for prosecution is required to be accorded in the name of the President, the Central Vigilance Commission will advise the Ministry/Department concerned and it would be for the Ministry/Department to consider the advice of the C. V. C. and to take a decision as to whether or not the prosecution should be sanctioned;

(ii) In case in which an authority other than the President is competent to sanction prosecution, and that authority does not propose to accord such sanction, it is required to report the case to the Central Vigilance Commission and take further action after considering the Central Vigilance Commission's advice, vide para (v)(b) of the Central Vigilance Commission's letter No. 9-1-64-DP, dated 13th April, 1964;

(iii) In a case falling under above, if the Central Vigilance Commission advises grant of sanction for prosecution but the Ministry/Department concerned proposes not to accept such advice, the case should be referred to this Department for a final decision;

(iv) In case falling under (ii) above, if the Central Bureau of Investigation has sought sanction for prosecution and the Central Vigilance Commission has recommended grant of sanction and yet, the competent authority proposes not to grant sanction, the case should be referred to this Department for a final decision;

(v) Where two or more Government servants belonging to different Ministries/Departments or under the control of different cadre controlling authorities are involved, the CBI will seek sanction from the respective Ministries/Departments or the respective competent authorities in accordance with the procedure laid down in the above paragraphs. Where sanction is granted in the case of one of the Government servants but sanction is refused in the case of the other or others, the C.B.I. will refer the case to this Department for resolution of the

conflict, if any, and for a final decision.

22. Thus, what appears from the above is that the original Ministry of Home Affairs' notification which created the CVC on 11-2-1964 was amended from time to time by DOP&T resolution No. 134/2/85-AVD-I dated 19-11-1987 and 17-10-1986 and on account of Section 24 of the CVC Act the subsequent amending resolutions being part of the Ministry of Home Affairs resolutions which has been validated by the above noted section of the CVC Act becomes part of the Act as those amendments or additions were made to the original resolutions creating the CVC prior to coming into force of the CVC Act of 2003. What may appear further is that no departmental head who could be the competent authority to accord sanction to prosecute could in real terms be independent in issuing the order, but to observe the requirement of the C.V.C. Act, 2003 in such matters which had adopted the resolutions, that departmental head was to submit his comments and views on the issue of according sanction to prosecute a public servant in the light of Section 6 of the Prevention of Corruption Act and if such a departmental head was expressing an opinion indicating as if he were not inclined to accord the necessary order to prosecute a public servant, which could be in conflict with the views of the CVC, which desired the sanction order to be passed for prosecution of the public servant, then, in that case the DOP & T was the final authority to decide the issue and that decision had to be final in such matters of according sanction to prosecute a public servant. The contents of Annexures-7, 8 and 9 have always to be viewed in the above context.

23. Learned Senior counsel appearing for the petitioner attempted to convince us that the effect of the contents of the three Annexures-7, 8 and 9 was that the sanction to prosecute the petitioner was refused. It may be true. But, one has always to treat them as mere opinions of the concerned Commissioners of Central Excise and Customs, Patna, who were issuing those orders and sending them to the CVC. In two of the Annexures, namely, Annexures-7 and 8, it has clearly been mentioned that in spite of not finding the case fit to accord sanction, the two Officers were requesting the CVC to consider their "just, fair and reasonable view", as may appear in paragraph 17 of Annexure 8 and last line of annexure-7, i.e. "D. G. Vigilance may kindly like to guide".

24. Thus, those were the only views placed before the CVC as was required to be placed under the scheme of the CVC Act. Even accepting, for the sake of argument, that the three Annexures No. 7, 8 and 9 could be orders refusing to accord sanction to prosecute the petitioner, the basic flaw in the argument could be that under the present legal scheme of sanctioning prosecution of a public servant, no competent authority, who could be the departmental head in most of the cases, has independent and unshackled jurisdiction to do it. It always has to follow the procedure noticed above and has to act accordingly.

25. Coming to the present case, as may appear from the supplementary counter affidavit filed on 31-3-2010 in obedience to this Court order dated 17-3-2010, respondent No. 1 has placed on record letter F. No. V557/16/2001/229 dated

18-1-2007 which appears signed by the Joint Commissioner, Vigilance on 17-1-2007 which has its annexures the order of the DOP & T directing the departmental head, i.e., the Commissioner of Central Excise to accept the advice of the CVC for sanctioning the prosecution of Shri L.P. Singh, the Superintendent, Central Excise, Begusarai, i.e., the petitioner. That order appears to be the basis upon which Annexure 10 was issued. As such, the order does not appear passed on the direction of the CVC, rather, it was passed as per the provision of law in the above behalf and the observation of the Officer who issued Annexure-10 "that the matter regarding sanction of prosecution was reconsidered in the light of the letter dated 18-1-2007 of the Director General of Vigilance, Customs and Central Excise, New Delhi, contained therein DOP&T advice dated 30-10-2006" could be said to be making reference only to the compliance of the provisions and procedures of the CVC Act on according sanction to prosecute the petitioner. It was not that it was a material extraneous to the serious consideration of the facts and evidence of the case. Besides, what I find is that one line content of Annexure-10 "that on three different occasions earlier my processors (i.e. sanctioning authorities) did not find it fit to grant sanction" is also not going to have any bearing upon the result of the present petition inasmuch as those were simply not going to affect the merits of the order which was otherwise in accordance with provisions of Section 24 of the CVC Act, as discussed above.

26. After having discussed the provisions of law and after having considered the contentions and the materials placed on the present petition what I found is that Annexures-7, 8 and 9 are mere opinions, *strictu sensu*, of the Commissioners, Central Excise and Customs, Patna, expressed while submitting their comments to the CVC as required under law. May be that the learned single Judge who was passing the judgment in *Om Prakash* (supra) appears reading similar documents, the way he has done, but after having perused the three Annexures before us, I find them as records of acts done by the sanctioning authorities to comply with the provisions of CVC Act and notifications which are the parts of the Act. Likewise, they were not forming any decisions" within the ambit of *Om Prakash* (supra) for the reasons which have just been pointed out by me. Accordingly, the reference made by the learned single Judge is answered.

27. As regards the merit of the petition, as amply indicated by me, it does not have any merit and the same is dismissed.

28. If any stay was granted by any Bench in connection with the trial Court proceedings in the present petition, the same shall stand vacated.