
(2004) 04 RAJ CK 0068
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5162 of 2003

Munshi Lal Shakya

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-04-2004

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(2), 19, 7

Citation : (2004) 4 RCR(Criminal) 780 : (2004) 4 RLW 2348 : (2004) 3 WLC 754

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Mahesh Boda, for the Appellant; Chandralekha, Dy. G.A., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner against the respondents on 28.7.2003 with the prayer that by appropriate writ, order or direction, the respondents Nos. 2 to 4, namely, Director General, Anti Corruption Bureau, Jaipur, Deputy Inspector General, Anti Corruption Bureau, Udaipur and Dy. Superintendent of Police, Anti Corruption Bureau, Banswara be directed to file final report before the competent court in respect of case No. 302/2000 under Sections 7, 13(1)(d)(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act of 1988") registered in the Anti-Corruption Department against the petitioner and the respondents Nos. 2 to 4 be further directed not to write letters pressurizing the respondent No. 5 District Education Officer (Elementary), Banswara to accord sanction for prosecution of the petitioner.

2. The case of the petitioner as put forward by him in this writ petition is as follows:-

The petitioner was LDC in the Education Department and he was posted in the office of the respondent No. 5 District Education Officer (Elementary), Banswara

in the year 1995.

According to the petitioner, on 14.7.2000, a trap was laid by the Anti Corruption Bureau on the complaint of one Shankerlal Rawat that the petitioner had demanded Rs. 50/- each from ten teachers for passing their arrear bills and in the trap, Rs. 500/- were recovered from an almirah and upon this, FIR being No. 302/2000 under Sections 7, 13(1)(d)(2) of the Act of 1988 was registered in the Anti-Corruption Department against the petitioner.

According to the petitioner, as per section 19 of the Act of 1988, prior sanction was necessary for prosecution of the petitioner and that sanction was to be given by the respondent No. 5 District Education Officer (Elementary), who is appointing authority of the petitioner. Therefore, the Anti Corruption Bureau sought sanction from the respondent No. 5 District Education Officer (Elementary) for prosecution of the petitioner, but the respondent No. 5 District Education Officer (Elementary) refused to give sanction twice vide orders dated 6.2.2001 and 25.4.2001.

The further case of the petitioner is that a departmental enquiry was also initiated against him on the same cause of action and the same was conducted by Shri R.C. Garg, Additional District Education Officer (Elementary), Banswara, who submitted his report on 24.1.2001 (Annex.P/2) exonerating the petitioner of all the charges framed against him on the complaint of one Shankerlal holding inter-alia:-

(i) That the persons from whom the petitioner demanded money had given their affidavits that no such demand was made by the petitioner.

(ii) That even the complainant Shankerlal and other teachers did not make any complaint against the petitioner.

The further case of the petitioner is that the respondent No. 5 District Education Officer (Elementary) in the official capacity refused twice to give sanction on 6.2.2001 and 25/1.2001 and not only this, on both dates, the officers concerned were different meaning thereby even different persons applied their mind and found that it was not a fit case for giving sanction for prosecution of the petitioner. However, inspite of refusal to give sanction twice, the respondents Nos. 2 to 4 have not filed FR in this case and on the contrary pressurizing the authorities of the Education Department to accord sanction for prosecution of the petitioner. Hence, this writ petition with the prayers as stated above.

The main contentions of the petitioner are as follows:-

(i) That since the Enquiry Officer through report dated 24.1.2001 (Annex.P/2) has exonerated the petitioner in the departmental enquiry of all the charges levelled against him, therefore, demanding of sanction from the respondent No. 5 District Education Officer (Elementary) by the personnel of Anti Corruption Bureau (respondent Nos. 2 to 4) is nothing, but an arbitrary exercise on their part.

(ii) That though the respondent No. 5 District Education Officer (Elementary) had refused to give sanction for prosecution of the petitioner twice on 6.2.2001 and 25.4.2001, but the respondents Nos. 2 to 4 are still pressurizing the respondent No. 5 District Education Officer (Elementary) to accord sanction and this action shows arbitrariness on the part of the respondents Nos. 2 to 4. Therefore, directions be issued to the respondents Nos. 2 to 4 not to pressurize the respondent No. 5 District Education Officer (Elementary) to accord sanction for prosecution of the petitioner.

A reply to the writ petition was filed by the respondent Nos. 1 to 4 and their case is that at the level of Anti Corruption Bureau, a prima facie case was found established against the petitioner and that is why, they were insisting the Education Department to accord sanction for prosecution of the petitioner. They have admitted the fact that earlier on 6.2.2001 and 25.4.2001, the respondent No. 5 District Education Officer (Elementary) refused to give sanction for prosecution of the petitioner. However, as a result of investigation of the Anti Corruption Bureau, a prima facie case was found proved against the petitioner as the amount of illegal gratification was got recovered from the petitioner himself and the notes were found to be the same which were accepted by the petitioner in the trap proceedings. Hence, no case for interference is made out and this writ petition deserves to be dismissed.

3. I have heard the learned counsel for the petitioner and the learned counsel for the respondents and gone through the materials available on record.

4. There is no dispute on the point that through report Annex.P/2 dated 24.1.2001, the petitioner was exonerated in the departmental enquiry initiated on the complaint made by one Shankerlal and not only this, the main charge against the petitioner was that he demanded money from ten persons and as per report Annex.P/2, it is also established that all the ten persons denied that fact and, therefore, through report Annex.P/2, the petitioner was exonerated of the charges levelled against him.

5. There is also no dispute on the point that as per Section 19 of the Act of 1988, prior sanction was necessary for prosecution of the petitioner and that sanction was to be given by the respondent No. 5 District Education Officer (Elementary), who is appointing authority of the petitioner.

6. There is also no dispute on the point that on 6.2.2001 and 25.4.2001, the respondent No. 5 District Education Officer (Elementary) refused to give sanction for prosecution of the petitioner.

7. There is also no dispute on the point that as per the result of the investigation made by the Anti Corruption Bureau, a prima facie case, according to them, was found established against the petitioner.

8. The question for consideration is whether in the facts and circumstances mentioned above, relief as sought for by the petitioner can be granted by this

Court under Article 226 of the Constitution of India or not.

9. In Superintendent of Police (C.B.I.) v. Deepak Chowdhary (1), the Hon''ble Supreme Court observed that exoneration in a departmental enquiry is no ground to refuse sanction.

10. Thus, so far as the exoneration of the petitioner in the departmental enquiry through report Annex.P/2 is concerned, on that ground, sanction cannot be refused. This is one of the aspects of the matter.

11. In Mansukhlal Vithaldas Chauhan v. State of Gujrat (2), the Hon''ble Supreme Court observed that the High Court cannot order the sanctioning authority to accord sanction for prosecution u/s 19(1) of the Act of 1988.

12. When this being the position of law, if the High Court cannot insist the sanctioning authority to grant sanction meaning thereby the High Court cannot issue directions to the concerned Department to submit FR. Therefore, the prayer of the petitioner that the respondents Nos. 2 to 4 be directed to submit FR in the case No. 302/2000 cannot be accepted.

13. For the reasons stated above, the petitioner is not entitled to the reliefs sought for under Article 226 of the Constitution of India and this writ petition deserves to be dismissed.

14. However, before parting with this order, some thing should be said here that before prosecution under the provisions of the Art of 1988, prior sanction by the appointing authority u/s 19 of the Act of 1988 is must and in this case, the appointing authority i.e. respondent No. 5 District Education Officer (Elementary) is not in a mood at all to give sanction for prosecution of the petitioner, therefore, in such a peculiar situation, it would be just, proper and desirable that higher authorities of the Anti Corruption Bureau and that of Education Department should meet together and sort out the dispute amicably, looking to the entire facts and circumstances of the case including the nature of offence alleged to have been committed by the petitioner.

Accordingly, this writ petition filed by the petitioner is dismissed with the above observations. No order as to costs.