
(2016) 01 RAJ CK 0045

In the Rajasthan High Court

Case No : Criminal Writ Petition No. 313/2015

Rajendra Prasad Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227
Penal Code, 1860 (IPC) — Section 120-B
Prevention of Corruption Act, 1988 — Section 19, Section 7

Citation : (2016) 01 RAJ CK 0045

Hon'ble Judges : Prashant Kumar Agarwal, J.

Bench : Single Bench

Advocate : Pankaj Gupta, for the Appellant; R.R. Baisla, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar Agarwal, J.—1. By way of this Criminal Writ Petition under Articles 226 and 227 of the Constitution of India, the accused-petitioner has questioned the validity of order dated 29.9.2015 whereby the competent authority i.e. Director, Mines, Rajasthan Udaipur has granted sanction for prosecution of the petitioner for the offence under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter to be referred as "the Act") and Section 120-B IPC. The question raised by the petitioner in the present writ petition is whether the competent authority had power to review its decision once he previously decided not to grant prosecution sanction in respect of petitioner as required under Section 19 of the Act.

2. Brief relevant facts for the disposal of this petition are that on a written complaint submitted by the complainant, FIR No. 521/2012 came to be registered by Superintendent of Police, Anti Corruption Bureau, Jaipur against the petitioner and co-accused on the premise that they entered into criminal conspiracy and demanded an amount of Rs. six lacs as bribe from the

complainant in lieu of transfer of some Mines. It is to be noted that it is an admitted fact that trap proceedings against the petitioner or co-accused could not be conducted. On complaint being submitted the allegations made in the same were verified by the ACB and on further verification of the allegations, conversations allegedly taken place between complainant and petitioner were recorded and transcript were prepared. Although, trap could not be conducted and it is an admitted fact that no money was accepted by the petitioner or co-accused as bribe from the complainant or any other person and no recovery was made, but on the basis of evidence collected during the course of investigation charge-sheet for the aforesaid offence was prepared against the petitioner and co-accused the then Mining Engineer, Sikar. Letter No. 75 dated 3.2.2014 alongwith the draft of prosecution sanction was sent by the ACB to the Director, Mines Department, Udaipur i.e. the sanctioning authority for grant of sanction as required under Section 19 of the Act in respect of petitioner and the Director after affording opportunity of hearing to the petitioner and investigating officer of the case and after perusal of evidence collected during investigation and also an affidavit meanwhile submitted by the complainant vide note-sheet dated 27.3.2014 took a tentative decision not to grant prosecution sanction in respect of the petitioner and letter dated 7.4.2014 was written by him to the Government of Rajasthan, Mines Department, as per circular dated 6.4.2002 about his proposal not to grant sanction but the Government of Rajasthan, Mines Department through Deputy Secretary vide letter dated 24.7.2014 asked the Director to reconsider his aforesaid proposal on merit in the light of points mentioned in the letter. The question of grant of sanction was reconsidered by the Director and the previous proposal made by him was reiterated vide letter dated 26.8.2014 written to Government of Rajasthan, Mines Department. It is to be noted that the Government of Rajasthan, Mines Department vide letters dated 8.10.2014, 6.1.2015, 27.7.15 and 25.8.2015 again and again asked the Director to reconsider his previous proposals not to grant sanction in respect of petitioner on merit in the light of points raised in these letters after considering the evidence collected during investigation. It is further to be noted that in the meanwhile ACD vide letter dated 26.8.2015 reminded the Director, Mines Department, Udaipur for his decision about grant of sanction in respect of the petitioner and in response to that letter, Director vide letter dated 31.8.2015 informed the ACB that vide letter dated 25.8.2015 Government of Rajasthan, Mines Department has been intimated by him about his decision not to grant prosecution sanction. From the material made available on record it is also clear that vide letter dated 25.8.2015 also, the competent authority i.e. Director, Mines Department, Udaipur wrote to Government of Rajasthan about his decision not to grant sanction. From the material made available on record it is further clear that vide note-sheet dated 10.9.2015, Principal Secretary, Mines Department, Government of Rajasthan concurred with the proposal of the competent authority but as per circular dated 6.4.2002 the aforesaid proposal was sent for the approval of CVC Rajasthan. It appears that CVC did not concur with the proposal. Thereafter, vide letter dated 24.9.2015 Government of

Rajasthan asked the Director, Mines Department, Udaipur i.e. the competent authority to grant prosecution sanction in respect of petitioner and vide impugned order dated 29.9.2015 prosecution sanction as required under Section 19 of the Act was granted by the Director and it is this order which is under challenge by way of this writ petition.

3. It was submitted by the learned counsel for the petitioner that once the competent authority i.e. Director, Mines Department, Udaipur after considering the evidence collected during investigation and having discussion with the investigating officer and after affording opportunity of hearing to the petitioner came to a conclusion that it is not a fit case in which prosecution sanction as required under Section 19 of the Act is to be granted against the petitioner, he had no jurisdiction to review/reconsider the same without there being additional/fresh evidence more particularly on the direction of the Deputy Secretary, Mines Department, Government of Rajasthan and to grant sanction vide impugned order dated 29.9.2015. It was further submitted that it is well settled legal position that if the competent authority once refuses to grant prosecution sanction against a public servant as required under Section 19 of the Act, he has no jurisdiction and authority to review the same and to grant sanction if additional evidence is not placed before him requiring reconsideration of his previous decision. It was also submitted that it is well settled legal position that the competent authority has to take his own independent decision on the basis of evidence placed before him to grant or not to grant sanction for prosecution of a public servant and if such a decision is taken by him under the direction/pressure/influence of a higher authority, the same becomes tainted and is liable to be quashed and set aside by the Court. According to learned counsel for the petitioner in the present case independent decision was taken by the competent authority more than once to the effect that it is not a fit case in which prosecution sanction is to be granted against the petitioner, but the matter was referred to the Government and on the basis of letter dated 24.9.2015 of the Deputy Secretary, Mines Department, Government of Rajasthan and more particularly on the basis of direction given in this letter, the Director without referring his previous decisions mechanically vide impugned order dated 29.9.2015 granted sanction against the petitioner. It was submitted that such order carries no authenticity and has been passed without application of mind only on the basis of direction of a higher authority and it is not sanction in the eye of law and is liable to be quashed and set aside by this Court. It was also submitted that otherwise also the sanction authority i.e. the Director has granted prosecution sanction against the petitioner mechanically without application of mind merely on the basis of draft of sanction provided by the ACB vide letter dated 3.2.2014.

4. In support of his submissions, learned counsel for the petitioner relied upon the cases of State of Himachal Pradesh v. Nishant Sareen reported in , (2010) 14 SCC 527, Order dated 14.1.2009 passed by the Punjab & Haryana High Court in the case of Harbans Lal v. State of Punjab & Anr. (Criminal Misc. No. M.41589 of

2005), Order dated 10.3.2010 passed by the Rajasthan High Court in the case of Munish Kumar Sharma v. The State of Rajasthan & Ors. (S.B. Civil Writ Petition No. 7156/2007), Order dated 10.9.2010 passed by the High Court of Chhatisgarh at Bilaspur in the case of Arvind Kumar Chaturvedi v. State of Chhatisgarh & Ors., Order dated 27.1.2014 passed by the Rajasthan High Court in the case of Fateh Singh Meena v. Chairman & MD, JVVNL & Anr. (S.B. Civil Writ Petition No. 3247/2013) and order dated 27.10.2015 passed by the Division Bench of the Rajasthan High Court in the case of Abdul Aziz Gauri v. The State of Rajasthan & Ors. (D.B. Civil Special Appeal No. 1231/2014).

5. On the other hand, learned Public Prosecutor controverting the submissions made on behalf of the petitioner, submitted that only tentative decision was taken by the competent authority vide note-sheet dated 27.3.2014 and the letter dated 7.4.2014 written to the Government of Rajasthan, Mines Department, Rajasthan and the matter was referred to the Administrative Department as per circular dated 6.4.2002 and, therefore, it cannot be said that the competent authority took a final decision not to accord prosecution sanction as required under Section 19 of the Act against the petitioner and, therefore, it cannot be said that later on the competent authority without jurisdiction and additional/fresh evidence reviewed his previous decision and granted prosecution sanction against the petitioner vide impugned order dated 29.9.2015. It was further submitted that although the competent authority i.e. Director, Mines Department, Udaipur again vide letter dated 26.8.2014 and letter dated 25.8.2015 reiterated his previous proposal not to grant sanction against the petitioner, but ultimately decision was taken to grant sanction against the petitioner and the Government of Rajasthan vide letter dated 24.9.2015 asked the Director to grant sanction against the petitioner. It was submitted that on the basis of evidence collected during investigation prima facie it was found that sufficient evidence is available on record to proceed against the petitioner for the aforesaid offence and, therefore, a conscious decision was taken to grant sanction as required under Section 19 of the Act. It was submitted that vide letter dated 24.9.2015 direction was not issued to the competent authority to grant sanction against the petitioner but merely opinion made at the level of Government was communicated and thereafter an independent decision was taken by the competent authority to grant sanction. It was also submitted that in the facts and circumstances of the case it cannot be said that prosecution sanction has been granted mechanically without application of mind merely on the direction of a higher authority. It was further submitted that the note-sheets prepared in the course of decision making process and inter departmental letters written from time to time cannot be made basis to challenge the validity of order of sanction as these are office notes only and the validity of sanction can be judged only on the basis of sanction order itself.

6. On consideration of submissions made on behalf of the respective parties and the material made available for my perusal as well as the relevant legal provisions and the case law, I do not find any illegality or perversity in the

impugned order dated 29.9.2015, whereby the competent authority has granted prosecution sanction against the petitioner, requiring interference by this Court at this stage of the proceedings.

7. Perusal of note-sheet dated 27.3.2014 and letter dated 7.4.2014 written by the competent authority i.e. Director, Mines Department, Udaipur to the Deputy Secretary, Rajasthan, Jaipur shows that although the competent authority considered the evidence collected by ACB during investigation and he had discussion with the investigating officer of the case and also afforded personal hearing to the petitioner, but it is clear that he took a tentative opinion as required under circular dated 6.4.2002 to the effect that it is not a fit case in which prosecution sanction is to be granted against the petitioner and final decision not to grant sanction was not taken by him. It is to be noted that copy of the letter dated 17.4.2004 was never sent to ACB. It is further to be noted that Government of Rajasthan Mines Department did not agree with the aforesaid proposal of the competent authority and vide letter dated 24.7.2014 he was asked to reconsider the question of sanction on merit in the light of points mentioned in the letter. Although, the competent authority the letter dated 26.8.2014 reiterated his previous proposal but it is clear from this letter dated 26.8.2014 the points raised by the Government vide letter dated 24.7.2014 were not properly considered by the competent authority. Similarly, vide letter dated 25.8.2015 also the competent authority reiterated his previous proposal not to grant sanction as intimated by him to the Government vide letters dated 7.4.2014 and 26.8.2014, but his proposal was not accepted at the Government level and opinion was intimated to the competent authority vide letter dated 24.9.2015. Although, it is also clear that the proposal made by the competent authority vide letter dated 25.8.2015 was approved by the Principal Secretary, Mines Department, Government of Rajasthan, Jaipur vide note-sheet dated 10.9.2015 but the matter was sent for the approval of CVC Rajasthan, Jaipur as per circular dated 6.4.2002 and ultimately vide impugned order dated 29.9.2015 sanction was granted. I am of the considered view that as no final decision was taken by the competent authority at any stage not to grant sanction against the petitioner, it cannot be said that vide impugned order dated 29.9.2015 he has reviewed or reconsidered his previous decision without there being no additional/fresh evidence. Merely because as per circular dated 6.4.2002, the question of sanction was referred to the Administrative Department and then to CVC Rajasthan, Jaipur and the Government of Rajasthan vide letter dated 24.9.2015 opined that it is a fit case in which prosecution sanction is to be granted, it cannot be said that the sanction was granted by the competent authority on the direction of a higher authority or under his pressure or influence. The material placed on record being inter departmental office-notes and communications cannot be relied upon for leveling the impugned order to be tainted and being granted under the direction of a higher authority or under his pressure or influence. I agree with the learned Public Prosecutor that to examine the validity of the sanction, the impugned order only is required to be considered by the

Court. I found it is not a case in which the competent authority without jurisdiction reviewed his previous decision or he has mechanically granted sanction on the direction of a higher authority or under his influence or pressure. It is to be noted that in the present writ petition, validity of circular dated 6.4.2002 is not under challenge. It is well settled legal position that the validity of a prosecution sanction can be examined by the trial Court on the basis of evidence made available on record during trial and the same cannot be challenged at the threshold by way of writ petition or any other remedy before the High Court. So far as challenge to the validity of order dated 29.9.2015 on the ground that draft of sanction was provided by the ACB itself to the competent authority is concerned, in my opinion merely by that reason it cannot be accepted the sanction order has been granted mechanically without application of mind. It is an admitted fact that alongwith letter dated 3.2.2014, a draft sanction order was also sent by ACB to the Director but in this letter it has clearly been mentioned that the draft is being sent only for the convenience of the authority and the sanction order is to be passed by it only after considering the report prepared by the ACB and independently considering the evidence collected during the course of investigation and a speaking order is required to be passed in the light of judgments and circulars referred in the letter. In my opinion when such a precautionary note has been mentioned in the letter dated 3.2.2014, at this stage of the proceedings it cannot be said that the sanctioning authority has merely put his signature on the draft without application of mind. The validity of order of sanction on this ground also can be considered by the trial Court after parties led their respective evidence.

8. Consequently, the writ petition being meritless is, hereby, dismissed. The stay application also stands dismissed.