
(2015) 03 AP CK 0021

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23411 of 2007

Rama Rao

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Prevention of Corruption Act, 1988 — Section 10, 11, 13, 13(2), 15

Citation : (2016) 1 ALD(Cri) 125

Hon'ble Judges : Akula Venkata Sesha Sai, J.

Bench : Single Bench

Advocate : P. Gangaiah Naidu, learned Senior Counsel, for the Appellant

Final Decision : Disposed off

Judgement

Akula Venkata Sesha Sai, J.—This writ petition is filed under Article 226 of the Constitution of India, seeking the following relief:

"to issue a Writ or order(s) more particularly one in the nature of Writ of Certiorari for calling the records connected to the issuance of G.O. Ms. No. 275 dated 29-9-2007, which was issued without taking into consideration of the enquiry report of the Engineer-in-Chief bearing No. 460/VC(2) 2006, dt. 02-11-2006, set aside the G.O. Ms. No. 275 dated 29-9-2007 as illegal, arbitrary and malafide, as the Government is to abide by rule(s) 3 (1) and Rule 4(1) and 4(2) and consider the enquiry report of the Engineering-in-Chief and consequentially pass such other order(s) as this Hon"ble Court may deem fit and proper in the circumstances of the case." 2. Heard Sri P. Gangaiah Naidu, learned Senior Counsel appearing for the counsel for the petitioner on record, Sri P.N. Murthy and the learned Government Pleader for the Roads and Buildings for respondents apart from perusing the material available before the Court.

3. Petitioner herein entered into the Government service in the year 1976. While he was working as Deputy Superintending Engineer (RandB), one Mr. Shaik

Jahangir, a contractor lodged a complaint with the Anti Corruption Bureau (for short hereinafter called "ACB") and basing on which the Deputy Superintendent of Police, ACB, City Range I, Hyderabad registered a crime in Cr. No. 5/ACB-CR-2006 under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter called "the Act"). On the recommendation of the ACB, petitioner was placed under suspension pending investigation on 07.02.2006. On 01.06.2006, petitioner made a representation for revocation of the order of suspension and on 17.08.2006, the State Government asked the Engineer-in-Chief (Roads and Buildings) to furnish a detailed report on the ACB report. The Superintending Engineer (RandB), Electrical vide Lr. No. E3/Elec/Enquiry/06/07 dated 13.09.2006, submitted a report for taking further action. Subsequently, vide Lr. No. 460/UC (2) 2006 dated 02.11.2006, the Engineer-in-Chief sent the said report to the State Government. Thereafter, the State Government issued G.O. Ms. No. 275, Transport, Roads and Buildings Department, dated 29.09.2007, according sanction for prosecution of the petitioner under Section 19(1)(b) of the Act for the offences punishable under Section 7 and Section 13(2) read with Clause (d) of sub-Section (1) of Section 13 of the Act.

4. Calling in question, the validity and the legal acceptability of the said order of the Government, according sanction for prosecution of the petitioner, the present writ petition came to be filed.

5. This Court, while issuing Rule Nisi on 02.11.2007, granted interim suspension of the operation of the impugned G.O.

6. Responding to the Rule Nisi, a counter affidavit has been filed, denying the averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

7. It is contended by the learned Senior Counsel, appearing for the petitioner that the order of sanction passed by the State Government is highly illegal, arbitrary, unreasonable and null and void and is a result of total non-application of mind. It is further contended that the impugned order is opposed to the very spirit and object of the provisions of the Act. It is nextly argued that having called for the report from the Chief-Engineer and the Superintending Engineer, the Government is not justified in not considering the report of the Superintending Engineer. It is also submitted that except relying upon the ACB report, the State Government did not independently consider the issue in the light of the material including the report of the Superintending Engineer. The learned counsel, to bolster his submissions and contentions, places reliance on the Judgment of the Hon'ble Apex Court in *Mansukhlal Vithaldas Chauhan Vs. State of Gujarat*, and the Judgment of this Court in *Sri K. Srinivasulu V. Government of Andhra Pradesh and Others* 2010 (3) ALD 452 (DB).

8. On the contrary, it is vehemently and strenuously contended by the learned Government Pleader for Roads and Buildings, appearing for the respondents that the State Government is justified in issuing the impugned G.O having regard to

the facts and circumstances. It is also submitted that there is no illegality nor any procedural irregularity in the order of the Government, as such, the present writ petition is liable to be dismissed. It is also submitted that only after considering the entire material including the report of the Superintending Engineer, the State Government issued the impugned order, according sanction for prosecution of the petitioner. It is further submitted that the judgments cited by the learned counsel for the petitioner have absolutely no relevance to the facts of the present case.

9. In the light of the pleadings, submissions and contentions, now the issue that emerges for consideration of this Court is:

"Whether the impugned Governmental order, according sanction for prosecution of the petitioner is in accordance with law?" 10. The prevention of Corruption Act, 1988 which repealed the Prevention of Corruption Act, 1947 and the Criminal Law Amendment Act, 1952 received the assent of the President on 09.09.1988 and was published in the Gazette of India on 10.09.1988. Chapter V of the said legislation deals with sanction for prosecution. The provision of law which is germane and relevant for the purpose of adjudicating the issue in the present writ petition is Section 19 of the Act, which reads as infra:

"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, 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 inter-locutory order passed in 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."

11. In the instant case, the State Government accorded sanction for prosecution by virtue of G.O. Ms. No. 275 dated 29-9-2007 under Section 19 of the Act. In the instant writ petition, it is the case of the petitioner that the impugned order is neither sustainable nor tenable and the failure to consider the material available including the report of the Superintending Engineer is fatal. It is also the contention of the learned Senior Counsel that failure to assign reasons for according sanction for prosecution which is sine qui non for application of mind is fatal to the impugned order. These aspects are required to be evaluated and examined in the light of the judgments cited by the learned Senior Counsel.

12. In *Mansukhlal Vithaldas Chauhan* (supra), the Hon"ble Apex Court at paragraphs 9, 14, 17, 18 and 19, held as under:

"9. This Section places a bar on the Court from taking cognizance of the offences specified in Sub-section (1) against Public Servants unless the prosecution for those offences has been sanctioned either by the Central Government, if the person who has allegedly committed the offence, is employed in connection with the affairs of the Union Government and is not removable from his office except with the sanction of the Central Government, or by the State Government if that person is employed in connection with the affairs of the State Government. But if the "public servant" is not an employee of either the Central Government or the State Government, sanction, is to be given by the authority competent to remove him from the office held by him.

14. From a perusal of Section 6, it would appear that the Central or the State,

Government or any other authority (depending upon the category of the public servant) has the right to consider the facts of each case and to decide whether that "public servant" is to be prosecuted or not. Since the Section clearly prohibits the Courts from taking cognizance of the offences specified therein, it envisages that Central or the State Government or the "other authority" has not only the right to consider the question of grant of sanction, it has also the discretion to grant or not to grant sanction.

17. Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to Government Servants against frivolous prosecutions. (See: Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, . Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecutions and is a safeguard for the innocent but not a shield for the guilty.

18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. (See also: S.S. Shetty Vs. Bharat Nidhi, Ltd., ; State of Bihar and Another Vs. P.P. Sharma, IAS and Another, .

19. 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. Since 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."

13. In the case of Sri K. Srinivasulu (supra), a Division Bench of this Court at paragraphs 10 to 15, held as under:

"10. The requirement of obtaining sanction is to ensure that no public servant is unnecessarily harassed. Such protection is, however, not absolute or unqualified. While a public servant should be not subjected to harassment, genuine charges and allegations should be allowed to be examined by the Court. State Through

Anti-Corruption Bureau, Government of Maharashtra, Bombay Vs. Krishanchand Khushalchand Jagtiani, . The object of the provision for sanction is also that the authority giving the sanction should be able to consider for itself the evidence before it comes to the conclusion that the prosecution, in the circumstances, be sanctioned or forbidden. Jaswant Singh Vs. The State of Punjab, .

11. Sanction lifts the bar for prosecution. Grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act. Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, . It is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent, not a shield for the guilty. Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, .

12. An order of sanction should not be construed in a pedantic manner. The purpose for which an order of sanction is required to be passed should always be borne in mind. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. State of Karnataka Vs. Ameer Jan, .

13. Before sanction is granted, under Section 19 of the Prevention of Corruption Act, the competent authority should peruse the concerned documents and come to a definite conclusion that it is a case for prosecution or otherwise. It will be a futile exercise if the sanction order is passed in a routine manner. Mohd. Jaffrullah Khan Vs. State, . The authority entitled to grant sanction must apply its mind to the facts of the case, evidence collected and other incidental facts before according sanction. The Legislature has conferred on the authority, competent to remove the public servant from office, the power to grant sanction for the reason that he is competent to judge whether, on the facts alleged, there has been an abuse or misuse of the office held by the public servant. That authority would be in a position to know what was the power conferred on the office which the public servant holds, how that power could be abused for corrupt motive and whether, prima facie, it has been so done. R.S. Nayak Vs. A.R. Antulay, .

14. What is material at the time of grant of sanction is that the necessary facts, collected during investigation, constituting the offence are placed before the sanctioning authority and it has considered the material. Superintendent of Police (C.B.I) Vs. Deepak Chowdhary and others, . Consideration implies application of mind. Ordinarily the order of sanction must ex-facie disclose that the sanctioning authority had considered the evidence and other material placed before it. Jaswant Singh Vs. The State of Punjab, ; State of West Bengal and another Vs. Mohammed Khalid and others, ; and State of Bihar and Another Vs. P.P. Sharma, IAS and Another, ; Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, .

15. The sanctioning authority must accord or refuse sanction with reference to the facts on which the proposed prosecution is to be based. It is desirable that

these facts appear on the face of the sanction order. The State of Rajasthan Vs. Tarachand Jain, ; Gokulchand Dwarkadas Morarka vs. The KingAIR 1948 82 (Privy Council) : Gokulchand Dwarkadas Morarka vs. The KingAIR 1948 82 (Privy Council) . The order of sanction must ex-facie disclose that the sanctioning authority had considered the evidence and other material placed before it. State (Anti Corruption Branch) Govt. of N.C.T. of Delhi and Another Vs. Dr. R.C. Anand and Another, . While the order of sanction need not contain detailed reasons, the basic facts that constitute the offence must be apparent on the impugned order and the record must bear out the reasons in that regard. Proper application of mind to the existence of a prima facie case regarding the commission of the offence is a precondition for the grant or the refusal to grant sanction. State of Bihar and Another Vs. P.P. Sharma, IAS and Another, ."

14. The judgments referred to above and the principles laid down therein are squarely applicable to the facts of the present writ petition. In the considered opinion of this Court, there is absolutely no justification on the part of the State Government in not considering and totally discarding the report of the Superintendent Engineer having called for the same. This action on the part of the first respondent, in the considered opinion of this Court, is highly unreasonable and preposterous and totally lacks jurisdiction and at the same time it is fatal to the impugned action and undoubtedly renders the impugned G.O null and void.

15. It is a matter of common knowledge that a mere allegation and accusation of corruption cripples the morale of the individual and undoubtedly undermines the reputation in the society. The prosecution under the provisions of Prevention of Corruption Act, 1988 is an extreme action which badly and severely affects and disturbs the social life of an individual. Unless the Government comes to a conclusion that there is a substantial material to launch prosecution, the permission for prosecution cannot be accorded in a routine, unreasonable and arbitrary manner. In the instant case, except the report of the ACB, the State Government did not independently consider the issue nor considered any other material including the report of the Superintending Engineer. A perusal of the impugned order vividly shows that there is absolutely no application of mind at all. The grant of sanction is not a mere formality and there is a solemn and sacred duty cast upon the sanctioning authority to exercise this power with great care, caution and circumspection and it cannot be lost sight of that this discretionary power given to the State is a safeguard for innocent employees and is a sword in the hands of the sanctioning authorities to prevent frivolous complaints. The attempt of the respondents justifying the impugned action by way of filing counter cannot be permitted in view of the law laid down in the judgment of the Hon"ble Apex Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, wherein the Hon"ble Apex Court at paragraph 8 categorically held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in

the shape of affidavit or otherwise. The Apex Court further held that otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds later brought out.

16. In the facts and circumstances of the case, this Court finds no scintilla of hesitation nor any traces of doubt to hold that the impugned G.O cannot stand for judicial scrutiny. For the aforesaid reasons and having regard to the principles laid down by the Hon''ble Apex Court and this Court in the judgments referred to supra, writ petition is allowed, setting aside the G.O. Ms. No. 275, Transport, Roads and Buildings Department, dated 29.09.2007. However, it is open for the respondents herein, if so advised, to pass appropriate orders afresh, in accordance with law and in the light of the observations made supra and in the light of the law laid down in the above referred the judgments. Pending miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.