
(2011) 03 MP CK 0077
In the Madhya Pradesh High Court
Case No : M. Cr. C. No. 2100 of 2010

Sandeep Jaiswal and Others

APPELLANT

Vs

Mithilesh Jain and Another

RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(1), 156, 156(3), 157
Madhya Pradesh Municipalities (the Conduct of Business of the Mayor-in-Council/
President-in-Council and the powers and Functions of the Authorities) Rules, 1998 —
Rule 5
Penal Code, 1860 (IPC) — Section 120B, 420
Prevention of Corruption Act, 1988 — Section 13, 13(1), 13(2), 19(1), 5(1)

Citation : (2011) ILR (MP) 1787 : (2011) 3 MPHT 395

Hon'ble Judges : Vimla Jain, J; Rakesh Chandra Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.C. Mishra, J.—These petitions are being dealt with together since they relate to proceedings of the same criminal case.

2. MCrc No.2100/10 is a petition, u/s 482 of the Code of Criminal Procedure (for short "the Code"), for quashing of the proceedings originating from a complaint made by respondent no. 1 against the petitioners therein namely Sandeep Jaiswal, Ramesh Singh Baghel and Anil Jaiswal, respectively the then Mayor, Commissioner and Sub-Engineer of the Municipal Corporation at Katni, regarding offences punishable u/s 420 of the IPC and Section 13 of the Prevention of Corruption Act, 1988 (for brevity "the Act") whereas W.P. No.6740/ 10 is a petition, under Article 226 of the Constitution of India, preferred by Ramesh Singh Baghel only, for issuance of writ in the nature of certiorari to quash sanction granted by the competent authority viz. the Principal Secretary, Department of Law and Legislative Affairs, Govt. of M.P., Bhopal, for his prosecution in respect of the offences punishable under Sections 420 and 120-B

of the IPC and Section 13(1)(d) read with 13(2) of the Act.

3. For the sake of convenience, the relevant documents shall be referred to by their respective number as annexure to the writ petition.

4. Background facts leading to registration of the case may be summarized as under: -

(a) On 7/4/2005, on behalf of the Municipal Corporation, a notice (Annexure P/2) inviting short-term tenders was published in a local newspaper for 6 different construction works, having a total value of Rs.44 lacs.

(b) A Committee comprising President and two members of the Corporation scrutinized the tenders and vide order-dated 23/4/2005 (Annexure P/3), it recommended acceptance of the bid submitted by one Ramavtar Verma.

(c) By way of order-dated 3/5/2005 (Annexure P/4), the Mayor approved the proposal and, accordingly, as per the provisions of the M.P. Municipalities (The Conduct of Business of the Mayor-In-Council/President-In-Council and the Powers & Function of the Authorities) Rules, 1998 (for brevity "the Rules"), a draft agreement was prepared for construction of cement concrete road in as many as seven wards involving expenditure of a total sum of Rs. 11,22097/-.

(d) On 6/6/2005, Ramesh Singh Baghel joined as the Commissioner of the Corporation and on the following day only, he signed the agreement awarding works to Ramavtar Verma.

(e) On 5/5/2006, complainant Mithilesh Jain, one of the Councilors (arraigned as respondent no. 1 in the M.Cr.C), filed a complaint before Special Judge (under the Act) at Katni against Ramesh Singh Baghel, Sandeep Jaiswal and Anil Jaiswal regarding commission of the offences punishable u/s 420 of the IPC and Section 13 of the Act in respect of the road constructed in Sadhram Higher Secondary School.

(f) Instead of examining the complainant at once, the learned Special Judge proceeded to fix 23/5/2006 as the date for recording of preliminary evidence. Thereafter, she granted a number of adjournments for the purpose. The complainant could be examined on 2/4/2007 whereas examination of his witness G.P. Khampariya was conducted on 28/4/2008. Ultimately, vide order-dated 28/6/2008, learned Special Judge forwarded the complaint to Superintendent of Police, S.P.E. (Lokayukt), Jabalpur for investigation, u/s 156(3) of the Code. Accordingly, a case was registered as Crime No.31/2008 for the offences punishable u/s 420 of the IPC and Section 13(1)(d) read with 13(2) of the Act.

(g) Upon conclusion of the investigation, the matter was placed before the Competent Authority for grant of sanction, u/s 19(1) of the Act and Section 197 of the Code, for prosecution of Ramesh Singh Baghel. By virtue of the order passed on 3/4/2010 (Annexure P/1), the Authority viz. Secretary, Department of Law and Legislative Affairs, granted sanction.

5. In the light of these facts, Shri S.C. Part, learned Senior Counsel, while making reference to a decision of Division Bench of this Court in Jagdish Prasad Gupta Vs. State of M.P. and Gyaan Singh, has contended that the entire proceedings in investigation are liable to be quashed as void ab initio in view of the fact that after taking cognizance of the offences, learned Special Judge had no jurisdiction to direct investigation, u/s 156(3) of the Code.

6. In response, Shri Aditya Adhikari, appearing on behalf of SPE (Lokayukt), has submitted that any information, irrespective of whether it was based on an order sustainable in law or not, could have formed basis of an FIR.

7. Shri R.N. Singh, learned Senior Counsel, has strenuously contended that the order of sanction is ex facie illegal as it does not disclose that the sanctioning authority had considered the evidence and other material collected during investigation. According to him, Ramesh Singh Baghel could not be held liable for the offences in absence of mens rea on his part in view of the following facts -

(a) He had joined only a day prior to the date of execution of the agreement.

(b) As Commissioner, only he was authorized to act for or on behalf of the Municipal Corporation.

8. Opposing the prayer for quashing of sanction, learned Special Public Prosecutor has submitted that while acting in the capacity of Commissioner, Ramesh Singh Baghel, before signing the agreement, was required to ensure as to whether all the procedural requirements as to administrative approval and financial sanction/budgetary provision were complied with. He has further pointed out that the agreement signed by Ramesh Singh Baghel related to works worth Rs.44 lacs, for which -

(a) neither sites were selected nor estimates were prepared and it was also not decided as to where the c.c. roads were to be constructed.

(b) financial sanction for all the proposed works could not be accorded by the Mayor namely Sandeep Jaiswal who, under Rule 5 of the Rules, had power to sanction works valuing upto Rs.5 lacs only.

(c) guidelines governing publication of the notice inviting tenders in State Level as well as National level Hindi and English Newspapers were not followed and it was published in a local newspaper "Mahakaushal Kesari".

9. In response, Shri R.N. Singh, learned Senior Counsel, while making extensive reference to the Rules, has stressed that no option was available with Ramesh Singh Baghel except to sign the agreement as the statutorily mandatory period of 7 days commencing from the date of receipt of resolution, as contemplated in sub-rule (6) of Rule 12, had already elapsed.

10. At the outset, it may be observed that order-dated 28.06.2008 passed by learned Special Judge directing the S.P. to investigate into the complaint, was not sustainable in view of the well-settled position of law that a Magistrate can order

investigation, u/s 156(3) of the Code, only at the pre-cognizance stage (See. Tula Ram and Others Vs. Kishore Singh, . Needless to say that by virtue of Section 5(1) of the Act, the Special Judge, though an Additional Sessions Judge, acts as a Magistrate for the purpose of taking cognizance of the offences. Accordingly, in the present case, once the cognizance of the offences was taken by the Special Judge, she was not competent to order investigation, u/s 156(3) of the Code, though she could have directed investigation, u/s 202(2), for the purpose of deciding whether or not there are sufficient grounds for proceeding but the object of such an investigation would have been not to initiate a fresh case on police report but to assist the Judge in completing proceedings already instituted upon a complaint before her (Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, referred to) and, as further explained in Tula Ram's case, the investigation u/s 202 would be in the nature of an enquiry.

11. Even though, the investigating officer was not expected to ascertain as to whether the direction for investigation was given u/s 156(3) or 202(2) of the Code yet, in any case, he was not debarred from exercising the general power of investigation (Emperor Vs. Bhola Bhagat and Others, , Gopal Naick and Others Vs. Alagirisami Naick, and AIR 1932 579 (Lahore) referred to). These decisions were followed in Dr. Shankar Singh Ganda Singh Vs. State of Punjab, . For the present purpose, it will suffice to quote the following observations made by a Division Bench in Rashid Ahmad's case (supra)-

the powers given to the police by Section 156 are not affected when an order to investigate u/s 202 is made, and though it is not open to the Magistrate when a complaint has been made to him to direct the Police to make a charge in the same case, but it is open to the Police to do so if they think proper.

As such, even in absence of a specific direction, Investigating Officer had every authority to record an FIR and register a case. However, such a factual situation squarely attracted provisions of Section 210 of the Code. It is, therefore, not possible to hold that the Investigating Officer had no authority to conduct an investigation into the offences mentioned in the complaint.

12. There is yet another aspect of the matter. The scope of a preliminary enquiry preceding lodging of the FIR would be limited to ascertain whether any cognizable offence has been committed. u/s 154 of the Code, the word "Information" is not qualified by any adjective meaning thereby that information preceding a process not fully in conformity with the relevant legal provision can also form basis of first information report. For this, reference may be made to the decision of the Apex Court in Parkash Singh Badal and Another Vs. State of Punjab and Others, wherein it has been observed-

Section 154(1) regulates the manner of recording the first information report relating to the commission of a cognizable offence.

At the stage of registration of a crime or a case on the basis of the information

disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered u/s 156 of the Code to investigate, subject to the proviso to Section 157 thereof.

It has to be noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, "reasonable complaint" and "credible information" are used. Evidently, the non-qualification of the word "information" in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, "reasonableness" or "credibility" of the said information is not a condition precedent for registration of a case...

An overall reading of all the Codes makes it clear that the condition which is sine-qua-non for recording a First Information Report is that there must be an information and that information must disclose a cognizable offence.

13. Thus, viewed from any angle, even the violation of the mandatory procedure for directing investigation, u/s 156(3) of the Code, would not, by itself, be sufficient to vitiate the entire proceedings of the investigation. Moreover, as explained in H.N. Rishbud and Inder Singh Vs. The State of Delhi, , an invalid investigation into a cognizable offence would not nullify the cognizance or trial based thereon. We may also hasten to add that the charge-sheet also comprises allegations other than those made in the complaint. Moreover, as many as five other persons namely Laxmikant Dwivedi, Santosh Kumar Jain, Bharatlal Bilaiya, Ramnarayan Sethiya and Ramavtar Verma, respectively, the previous Municipal Commissioner, the then Assistant Engineer, Accountant & Public Relations Officer and the Contractor, have been arraigned as accused.

14. Further, the inherent powers, u/s 482 of the Code, are to be exercised ex debito justitiae to prevent abuse of the process of Court but not to stifle a legitimate prosecution. Since the case does not fall under any of the categories of cases formulated by the Supreme Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, no interference with the proceedings under the inherent powers is called for.

15. As pointed out already, Ramesh Singh, by way of the writ petition, has also challenged validity of the order according sanction for his prosecution.

16. First, advertent to the legal aspects of the matter, it may be observed that

even though, grant or refusal of sanction is purely an administrative act yet, the order is subject to judicial review and therefore, it is incumbent upon the State Government to record reasons (Matajog Dobey Vs. H.C. Bhari, Accordingly, any unlawful exercise of discretion in granting or declining sanction can be controlled by a prerogative order. Norms and guidelines to be followed, while considering the question of sanction, were laid down in Mansukhlal Vithaldas v. State of Gujarat (1991) 7 SCC 622 in the following words -

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.

17. Now, we turn to the factual aspects. Admittedly, the petitioner Ramesh Singh Baghel had joined as Municipal Commissioner/Chief Executive Officer only a day prior to the signing of the agreement. For examining the merits of the contention that no other option except to execute the agreement in question was available to him, it is necessary to refer to Rule 12 of the Rules, that reads thus:-

Execution of Resolution order - (1) It shall be necessary for the President (Speaker) in case of the Municipal Corporation, and in case of the Municipal Council and Nagar Panchayat its President, to send the copy of resolution to the Chief Executive Officer within seven days from the date of adoption of such resolution by the Council.

(2) The powers regarding the execution of any resolution or order shall be vested in the Chief Executive Officer.

(3) If in the opinion of the Chief Executive Officer, any resolution order is against the law or against the public interest or against the interest of the Municipality, the same shall be sent to the authority concerned for re-consideration indicating the reasons due to which such resolution order is against the law or against the public interest or against the interest of the Municipality.

(4) If on the receipt of the case under sub-rule (3) the authority concerned, even after reconsideration, keeps his earlier resolution or order as it is, such case shall be submitted to the Council by the Chief Executive Officer.

(5) If under sub-rule (4), the Council takes decision on the case to keep the resolution or order as it is, such case shall be sent by the Chief Executive Officer to the State Government in the case of Municipal Corporation, and to Director, Urban Administration and Development in case of Municipal Council and Nagar Panchayat. The order of the State Government or the Director, Urban Administration and Development as the case may be, shall be final and, accordingly, the Chief Executive Officer shall take action in the case

(6) It shall be necessary for the Chief Executive Officer to take action as required by sub-rule (3), (4) and (5) within seven days from the date of receipt of

resolution.

18. Obviously, the period of seven days has been prescribed for the purpose of enabling the Chief Executive Officer to consider all the relevant aspects of the matter and take appropriate action in accordance with sub-rules (3), (4) and (5) of the Rules.

19. In the light of flagrant violations of the relevant Rules in granting the administrative approval/technical sanction and lack of financial powers, as defined in Rule 5 of the Rules, to accord sanction for carrying out the works costing more than Rs.5 lacs, the petitioner Ramesh Singh Baghel ought to have followed the procedure prescribed in sub-rules (3), (4) and (5) [above] authorising him to refer the matter to Competent Authority, Council and the State Government respectively for reconsideration. In this view of the matter, his explanation that he had no other option but to sign the agreement was not reasonably acceptable. As indicated already, his predecessor-in-office namely Laxmikant Dwivedi has also been impleaded as an accused in the charge-sheet.

20. In Vineet Narain and Others Vs. Union of India (UOI) and Another, the Apex Court quoted with approval seven principles on Public Life as stated in the report of the Committee headed by Lord Nolan on "Standards in Public Life". The principle relating to accountability reads thus -

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

21. The fact that he had taken over charge of the office only a day before, did not assume any significance as being the Chief Executive Officer, the petitioner Ramesh Singh was responsible and accountable for each and every action taken by him. Furthermore, as propounded in State of Bihar and Another Vs. P.P. Sharma, IAS and Another, and re-affirmed in Superintendent of Police (C.B.I) Vs. Deepak Chowdhary and others, according of sanction is an executive act and validity thereof cannot be tested in the light of principles applicable to quasi-judicial orders. For these reasons, Ramesh Singh is not entitled to the relief sought for in the writ petition.

22. In the result, both the petitions are dismissed. However, nothing contained herein shall be construed as any expression of opinion on the merits of the case. It shall still be open to the petitioners to raise all such pleas as are available under law. There shall be no order as to costs.

23. A copy of this order be retained in the connected petition.