
(2015) 12 OHC CK 0045
In the Orissa High Court
Case No : W.P.(C) No. 25587 of 2014

Sankar Prasad Padhy

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 248(2), 374(2)
Penal Code, 1860 (IPC) — Section 34, 409, 477-A
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 19(c), 7

Citation : (2015) 12 OHC CK 0045

Hon'ble Judges : B.R. Sarangi, J.

Bench : Single Bench

**Advocate : S.K. Dash, A.K. Otta, A. Dhalsamanta and S. Das, for the Appellant;
S. Mishra, Addl. Govt. Advocate, for the Respondent**

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J.—The petitioner having been found guilty for the offence under Section 7 of the Prevention of Corruptions Act 1988 (in short hereinafter referred to as "P.C. Act") and convicted under Section 248 (2) of the Cr.P.C. by the learned Special Judge, Vigilance, Bhawanipatna, Kalahandi in judgment dated 19.03.2014 passed in G.R. (Vigilance) case No. 26 of 2009, has filed this writ petition to quash the show-cause notice dated 04.06.2014 issued under Clause 46(2)(b) of the GRIDCO Officer's Service Regulations indicating why he will not be dismissed from service vide Annexure-2 and consequential order dated 22.01.2015 passed by opposite party No. 2 dismissing him from the services under Clause 44(1)(b) (iv) of the GRIDCO Officer's Service Regulations, adopted by OPTCL vide Annexure-4.

2. The factual matrix of the case is that the petitioner joined in service in the year 1984 as an Assistant Engineer in Orissa State Electricity Board at Mohana in the erstwhile district of Ganjam, presently in the district of Gajapati. After reorganization, the petitioner's service was placed under Orissa Power

Transmission Corporation Limited (in short hereinafter referred to "OPTCL") and he was posted as Assistant General Manager, Electrical at Berhampur in May, 2012. In the year 2005, the service of the petitioner was placed in the Urban Development Department of the Government of Odisha on deputation. During the period of deputation, the petitioner worked as Executive Officer of Balugaon, Barbil and Bhawanipatna Municipality. After 12.06.2009 i.e. the day on which the trap was laid by the Vigilance Department, the petitioner was sent back to GRIDCO/Odisha Power Transmission Corporation Limited in 2010 and was posted at Budhipadar in the district of Jharsuguda as Manager, Electrical. Again he was deputed to CESU, Angul and subsequently brought back to OPTCL and posted at Berhampur in May 2012. On transfer in August, 2014, the petitioner joined in the headquarters i.e. at OPTCL, Bhubaneswar as Assistant General Manager (Electrical), G.C.C., Bhubaneswar.

While working as Executive Officer at Bhawanipatna, a criminal case was initiated against him on the allegation that on 11.06.2009 the decoy paid a sum of Rs. 1000/- to the co-accused Trilochan Rout, the Dealing Assistant, who demanded the same towards illegal gratification for processing the file for sanction of the building plan by the Bhawanipatna Municipality. The co-accused Trilochan Rout disclosed before the decoy that the petitioner has a share in the said bribe amount. Incidentally, a tainted currency note of Rs. 500/- was found from the upper table drawer of the petitioner, following the trap. Consequently, the petitioner stood charged for the offences under Section 13(2) read with Section 13(1) (d) and Section 7 of the P.C. Act 1988 read with Section 34 of IPC. Finally, he was convicted for the offence under Section 7 of the P.C. Act 1988 and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 1000/- and in default of payment of the fine to undergo rigorous imprisonment for a further period of two months. Against the said order of conviction and sentence, the petitioner preferred Criminal Appeal No. 1162/2014 under Section 374 (2) of Cr.P.C. and this Court vide order dated 31.03.2014 admitted the case, called for LCR and stayed realization of fine imposed by the learned Special Judge, Vigilance, Bhawanipatna till disposal of the criminal appeal in Misc. Case No. 467/2014. Though this Court stayed the realization of fine, did not suspend the sentence imposed on the petitioner while admitting the appeal. However, in Misc. case No. 466/2014 this Court released the petitioner on bail on such terms and conditions as deemed just and proper by the learned Special Judge, Vigilance, Bhawanipatna in the aforesaid case.

While the criminal appeal is subjudice before this Court, a show-cause notice was issued to the petitioner under Clause 46(2)(b) of the GRIDCO Officer's Service Regulations calling upon the petitioner to show-cause why he shall not be dismissed from service of the organization vide Annexure-2 dated 04.06.2014. At the show-cause stage, the petitioner approached this Court by filing this writ petition and this Court by order dated 13.01.2015 while issuing notice passed an interim order to the extent that no action shall be taken against the petitioner pursuant to show-cause notice dated 04.06.2014 in Annexure-2 till 10.02.2015.

But, in the meantime, the order of dismissal having been passed on 22.01.2015 vide Annexure-4, the petitioner sought for amendment of the writ petition and the same was allowed permitting the petitioner to incorporate the subsequent document i.e. sanction order and file consolidated copy of writ petition.

3. Mr. S.K. Dash, learned counsel for the petitioner while challenging the notice of show-cause, urged that by issuing such notice under Clause 46(2)(b) of the GRIDCO Officer's Service Regulations, the authorities have prejudged the matter by dismissing the petitioner from service without following due procedure of law. It is stated that the quasi judicial authority while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show-cause proceeding. A show-cause notice is meant to give a person making his objection against the proposed charge in the notice. He has relied upon the judgment of Madras High Court in *M. Perumal v. Tamil Nadu Generation.., W.P. Nos. 28133-28135 of 2011* disposed of on 27.01.2012 in which the decision of the apex Court in *ORYX Fisheries Private Limited Vs. Union of India (UOI) and Others*, has been referred to. Though this Court passed an interim order that no action shall be taken against the petitioner pursuant to show cause notice dated 04.06.2014 in Annexure-2 till 10.02.2015, the final order of dismissal was passed in Annexure-4 dated 22.01.2015 which is incorporated by way of amendment to the writ petition. Mr. Dash, learned counsel urged that the termination of petitioner from service on the backdrop of conviction under Annexure-1 is illegal and without jurisdiction as there is no absolute power under Section 19 (c) with regard to exercise of jurisdiction of any court to take cognizance under Section 7 of the P.C. Act 1988. There being no order of sanction from the authority competent to remove the accused from the service, being a regular employee under opposite party No. 2, the petitioner could not have been dismissed from service on obtaining sanction from Government because he was on deputation. From the judgment under Annexure-1, it appears that the prosecution has obtained sanction order from the Government which is marked as Exhibit 41 and annexed as Annexure-5 to the writ petition but not from the employer i.e. opposite party No. 2. In absence of valid sanction, the judgment of conviction becomes a nullity. Therefore, it is urged that unless the order of dismissal passed in Annexure-4 is set aside, it will lead to serious miscarriage of justice and judgment of conviction having been passed illegally and without jurisdiction is a nullity on the touchstone of law. To substantiate his contention he has relied upon *State of Karnataka through CBI Vs. C. Nagarajaswamy*, , *Mohammad Safi v. The State of West Bengal*, , AIR 1966 SC 69 , *Baij Nath Prasad Tripathi Vs. The State of Bhopal*, , *B.K. Kutty Vs. State of Orissa*, , *B.A. Kameswar Rao Vs. State of Orissa*, , *Duryodhan Patra Vs. State of Orissa*, , *Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh*, and *State of Uttarakhand Vs. Yogendra Nath Arora*, .

4. Mr. D.P. Nanda, learned counsel for opposite party No. 2 submits that the disciplinary authority has not prejudged the issue in any manner and the allegation made that no opportunity is given to the petitioner is not correct.

Referring to Regulation 46(2)(B), it is urged that the action taken against the petitioner is justified because in the event of conviction of an officer in a criminal offence by any competent court of law, discretion has been given to the disciplinary authority under the regulations to discharge the said officer from employment without any notice or to impose any other punishment and in the event any other punishment is sought to be or proposed to be imposed the same has to be preceded by giving an opportunity to said convicted officer to make a representation on the penalty sought to be imposed as might be mentioned in the show cause and no exception can be taken to such expression of intention and no motive can be attached to the same inasmuch as the relevant regulations require the disciplinary authority to categorically mention the specific punishment sought to be imposed if the same is not of discharge. Therefore, the authority having acted in consonance with the provisions of law, it cannot be construed that he has prejudged the matter and imposed punishment of dismissal from service vide Annexure-4.

5. On the basis of facts pleaded above, the only question that is to be considered is that the sanction as required under Section 19(1)(c) having not been taken from the employer of the petitioner, whether the order passed by the trial court convicting the petitioner is a nullity in the eye of law or not. If the order of conviction is a nullity, whether the consequential action taken can face the scrutiny of law or not.

6. The fact mentioned above being undisputed one, the only question that is to be considered whether the sanction order under Clause-19 (1) (c) of the P.C. Act 1988 has been obtained from opposite party No. 2 by the prosecution while initiating criminal case against the petitioner. As it appears from the judgment Annexure-1, Exhibit-41 is the sanction order which is annexed as Annexure-5 to the writ petition. On perusal of the same, it appears that the same has been issued by the Additional Secretary, Government of Odisha, G.A. Department on 24.11.2010 by order of the Governor.

On query being made by this Court whether the petitioner is a Government employee or not, Mr. D.P. Nanda, learned counsel for opposite party No. 2 fairly stated that the petitioner was not a Government servant rather he is the employee of OPTCL who was on deputation to Bhawanipatna Municipality to discharge the duty of the Executive Officer. It is admitted that the petitioner is an employee under opposite party No. 2. Opposite party No. 2 being the employer is competent to issue sanction order for initiating the proceeding against the officer working under it. It is also stated that no sanction order has been issued by opposite party No. 2, who is the employer of the petitioner while he was discharging his duty as Executive Officer, Bhawanipatna Municipality for alleged commission of criminal misconduct in demanding the alleged gratification. The sanction order is marked as Exhibit-41 and on that basis the criminal case was proceeded with and concluded in conviction. Therefore, in absence of any sanction order given by the employer, the judgment of conviction becomes nullity.

7. In state of Karnataka through C.B.I. (supra), the apex Court held that the judgment of conviction without valid sanction order even if it was recorded, it could be said to have been rendered illegality and without jurisdiction.

8. In Baij Nath Prasad Tripathi (supra) the Constitution Bench referring to the judgment of Federal court reported in AIR 1948 FC 16 held that the whole trial is null and void in absence of required sanction under the P.C. Act 1947.

9. In Md. Safi (supra), the apex Court held that a criminal court is precluded from determining the case before it in which charge has been framed otherwise than by making an order of acquittal or conviction only where the charge was framed by a Court competent to frame it and by a Court competent to try the case and make a valid order of acquittal or conviction. Therefore, the conditions requisite for initiation of proceedings before it includes prior sanction must be fulfilled. Otherwise the court does not obtain the jurisdiction to try the offence. The ultimate conclusion of trial court which lacks jurisdiction to take cognizance renders judgment of conviction or acquittal as a nullity.

10. In Mohammed Iqbal Ahmed (supra) the apex Court held as follows:

"..... It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show that the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest defect (sic-defect) in the prosecution, the entire proceedings are rendered void ab initio.....".

11. In B.K. Kutty (supra), this Court referring to the case of Mohd. Iqbal Ahmed (supra) of the apex Court held that 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 prosecution and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned. While dealing with Section 5(2) read with Sections-5(1) (c) and 6 of the P.C. Act 1947 this Court held that prosecution must adduce proof of legal and valid sanction. Facts constituting the offence either should be referred to in the sanction itself or must be established aliunde by evidence that those were placed before sanctioning authority and authority applied his mind. Therefore, cognizance cannot be taken when legal and valid sanction is wanting. In absence of any valid sanction the court has no jurisdiction to try the principal offence.

12. In B.A. Kameswar Rao (supra), this Court held that in absence of any valid sanction under Section 6 of P.C. Act, the trial of offence under Section 5(2) of P.C. Act by Special Judge is no trial at all and the Special Judge lacks jurisdiction to try offence under Sections 409 and 477-A I.P.C.

13. The apex Court in *State of Uttarakhand v. Yogendra Nath Arora* held that even if the employee was on deputation sanction is to be obtained from the appointing authority.

14. Considering the ratio decided in the above judgments and applying the same to the present case, since the sanction order under Annexure-5 has been obtained from Additional Secretary to Government by order of Governor, the same cannot be drawn as valid sanction as such the subject matter of criminal appeal to be adjudicated by this Court in accordance with law. Therefore, the action taken by the authority pursuant to Annexure-4 dismissing the petitioner from service hastily on the strength of so-called judgment of conviction under Annexure-1, which is subject matter of the criminal appeal pending before this Court, cannot sustain in the eye of law.

15. As it appears that petitioner had approached this Court against the notice of show cause in Annexure-2 dated 4.6.2014 by filing this application. While entertaining this application, this Court passed an interim order on 13.01.2015 in Misc. Case No. 22862 of 2014 directing that no action be taken against the petitioner pursuant to show cause notice dated 4.6.2014 in Annexure-2 till 10th February, 2015. During pendency of this writ application when the petitioner is enjoying the interim order, the authority passed the impugned order dated 22.01.2015 in Annexure-4 which has been brought by way of amendment to the writ application. This clearly indicates that the authority has overreached the interim order dated 13.01.2015 passed by this Court by dismissing the petitioner from service. Therefore, the authority has violated the interim order with undue haste, consequently the order so passed in Annexure-4 cannot sustain.

16. In view of such position, this Court is of the considered view that when against the order of conviction passed by the learned Special Judge (Vigilance), Bhawanipatna the petitioner has preferred criminal appeal before this Court which has been admitted and pending for adjudication, the consequential action in removing the petitioner from service vide Annexure-4 cannot sustain in the eye of law. Accordingly, the office order dated 22.01.2015 issued by opposite party No. 2 dismissing the petitioner from services under Clause-44(1)(b)(iv) of GRIDCO Officer's Service Regulations adopted by OPTCL vide Annexure-4 is hereby quashed. Opposite party No. 2 is directed to reinstate the petitioner in service and grant all consequential benefits as due and admissible to him in accordance with law forthwith.

17. The writ petition is allowed. No order to cost.