

(2015) 07 SC CK 0084

In the Supreme Court Of India

Case No : Civil Appeal No. 1971 of 2015 (Arising out of S.L.P. (Civil) 18758 of 2014)

State of Madhya Pradesh and Others

APPELLANT

Vs

Anand Mohan and Others

RESPONDENT

Date of Decision : 09-07-2015

Acts Referred:

Constitution of India, 1950 — Article 166(2), 166(3)
Criminal Procedure Code, 1973 (CrPC) — Section 173
Madhya Pradesh Works (Allotment) Rules — Rule 1
Penal Code, 1860 (IPC) — Section 120B, 201, 420, 467, 468
Prevention of Corruption Act, 1947 — Section 6
Prevention of Corruption Act, 1988 — Section 10, 11, 13, 13(1), 13(2)

Citation : (2015) 8 AD (SC) 612 : (2016) 1 CDR 91 : (2015) CriLJ 3968 : (2015) 4 Crimes 173 : (2015) 5 MLJ 721 : (2015) 3 RCR(Criminal) 656 : (2015) 7 SCALE 648 : (2015) 9 SCC 35 : (2015) 2 SCC(L&S) 767 : (2015) 7 SCJ 383

Hon'ble Judges : Dipak Misra, J; Prafulla C. Pant, J

Bench : Division Bench

Advocate : Mishra Saurabh, Vanshaja Shukla and Ankit Kumar Lal, for the Appellant; Anuj Puri and Abhishek Vikas, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J—This Appeal is directed against judgment and order dated 03.09.2013 passed by the High Court of Madhya Pradesh at Jabalpur whereby said Court has allowed Writ Petition No. 21246 of 2012 challenging the order of sanction for prosecution, passed by Secretary, Law and Legislative Affairs, Government of Madhya Pradesh, Bhopal.

2. Brief facts of the case are that Respondent No. 1 was an Executive Engineer, and Respondent No. 2 was an Assistant Engineer with Bhopal Development Authority (for short "BDA"). Said authority got constructed 33/11 KV Sub-Station at Raksha Vihar Colony, Bhopal, for which tenders were invited on 25.07.1995, and work order was given in favour of one A.R.K. Electricals, Bhopal. The

construction was completed on 25.09.1997, and ownership of the sub-station was transferred to Madhya Pradesh State Electricity Board (for short "MPSEB"). It is alleged that the Respondents, in connivance with other accused, entered into a criminal conspiracy in connection with above construction work, and got prepared a forged note-sheet, pursuant to which excess payment of Rs. 9,51,657/- was paid to a contractor (Ashok Johri). On this information, Economic Offences Wing (for short "EOW") of the State Government registered Crime No. 28 of 2004 in respect of offences punishable Under Sections 420, 467, 468, 471, 120B and 201 Indian Penal Code, and Under Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 (for Short "the Act") against the Respondents and other accused. After investigation, the Wing sought previous sanction necessary for prosecution of the Respondents from the Administrative Department of the State Government. The Administrative Department of the State Government, after examining the papers declined the sanction vide its order dated 08.03.2011. However, on completion of investigation, when charge sheet was filed against the accused before the Court of Special Judge (Prevention of Corruption Act), Bhopal, the court, vide its order dated 15.02.2012, directed that necessary sanction for the prosecution of Respondents be obtained from Appellant No. 2, Secretary, Department of Law and Legislative Affairs, Government of Madhya Pradesh, which is the Competent Authority. Said Authority after examining the papers vide order dated 20.11.2012, (Annexure P-8) granted necessary sanction to prosecute the Respondents.

3. The Respondents challenged the order dated 20.11.2012, passed by present Appellant No. 2 before the High Court through Writ Petition No. 21246 of 2012. The High Court allowed the Writ Petition holding that Appellant No. 2, i.e. Secretary, Department of Law and Legislative Affairs was not the Competent Authority to grant the sanction.

4. Learned Counsel for the Appellants argued before us that the High Court has erred in law in holding that the Law Department was not the Competent Authority to grant sanction for the prosecution. In this connection reference was made to the Order/Notification dated 03.02.1988 (Annexure P-1) issued by the State Government regarding amendment in the relevant rules delegating the power relating to sanction of prosecution to the Department of Law and Legislative Affairs passed by the State Government.

5. On the other hand, learned Counsel for the Respondents contended that the Competent Authority to grant sanction for prosecution against the present Respondents was Appellant No. 1, Secretary, Housing and Environment of Government of Madhya Pradesh, and said authority had declined to grant the sanction vide its Order dated 08.03.2011. It is further submitted that Appellant No. 2 was conferred power to grant the sanction vide circular dated 28.02.1998, as such it was not competent to grant sanction in respect of offence alleged to have been committed by the Respondents in the year 1997.

6. We have considered the rival submissions of the parties. Section 19(1) of the

Prevention of Corruption Act requires previous sanction for prosecution of a public servant in respect of offence punishable Under Section 13 of the Act, Section 19 of the Act reads as under:

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, save as otherwise provided in the Lokpal and Loakayuktas Act, 2013-

(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 (2 of 1974),--

(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 or 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 interlocutory order passed in any 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.

{In Sub-section (1) words "save as otherwise provided in the Lokpal and Lokayuktas Act, 2013" are added vide Act (1) of 2014 with effect from 16.01.2014 before Clause (a) of the Sub-section (1) from Clause (b) of Sub-section (1).}

7. From the Section quoted above, it is clear that the sanction for prosecution in respect of the public servant employed in connection with affairs of the State, who is not removable from his office save by or with the sanction of the State Government, such Government shall be, authority to grant sanction for prosecution. It is not disputed that the previous sanction was sought by the EOW for prosecution of the Respondents. The only issue is as to which of the department of the State was competent to grant the sanction. Order dated 03.02.1988 (Annexure P-1), published in the Official Gazette, whereby the Madhya Pradesh Works (Allotment) Rules (for Short "MPWAR") were amended, reads as under:

Madhya Pradesh Gazette (Extraordinary) Published by Authority

No. 35, Bhopal Wednesday, 3rd February, 1988 Personnel Administrative Reforms & Training Department Bhopal, dated 3rd February, 1988

No. F A-1-1-88-49(1)-225: In exercise of powers conferred by Clauses (2) and (3) of Article 166 of the Constitution of India the Hon'ble Governor of Madhya Pradesh makes more amendments in Madhya Pradesh Works (Allotment) Rules, namely:

Amendment

In the aforesaid rules:

(1) The para 4 is replaced with the following para in the policy made in the para 21 in the Schedule-in (A) Department under Law & Legislative Affairs Department, namely:

4. (One) Criminal Procedure includes all subjects coming under Code of Criminal Procedure save the probation of the Criminals, and

(2) Sanction of prosecution Under Section 6 of the Prevention of Corruption Act, 1947.

(2) The following term added by the Notification No. 2980-3632-A(1), dated 18th November, 1983 irrespective of any serial number to which it was added, and which has been amended from time to time in respect of the policy made in part

(A) Department under the heads of all the departments, be deleted.

Sanction of the prosecution Under Section 173 of the Code of Criminal Procedure, 1973 and Section 6 of the Prevention of Corruption Act, 1947 in respect of services related to those departments.

By order & in the name of the Governor of MP A.D. Mohile, Special Secretary

8. Consequent to above amendment, Chief Minister of Madhya Pradesh vide order dated 08.02.1988 (Annexure P-2) delegated the power to grant sanction for prosecution of the public servants to the Law Secretary of Madhya Pradesh Law Department. Said document is reproduced below:

Madhya Pradesh Government Personnel, Administrative Reforms and Training Department

ORDER

Bhopal, dated 8th February, 1988

According to the para (1) of Directive No. 2 of Supplementary Directive Part-5 Under Rule 1 of Works Rules of the Madhya Pradesh Government made by the Hon"ble Governor in exercise of powers conferred by Clause (2) and (3) of Article 166 of Constitution of India, No. F A 1-1/88/49/1, pursuant to the authority invested to me and superseding the order dated 4th November of the General Administrative Department, I Motilal Vora, Chief Minister, hereby direct that the Secretary, Madhya Pradesh Government, Law Department shall dispose of the cases related to the prosecution sanction of the Government servants.

Sd/- Motilal Vora Chief Minister"

9. By the Order dated 21.04.1997 (Annexure P-3), it is provided that the Department of Law and Legislative Affairs shall obtain opinion of the concern Administrative Department before granting the sanction. It is further provided that in case of conflict between the two departments, the matter shall be referred to Sub-Committee of the Cabinet. However, the order dated 21.04.1997 (Annexure P-3) was withdrawn vide letter dated 10.07.1997 (Annexure P-4) to the extent that in case of conflict the matter would be required to be referred to Sub-Committee of the Cabinet. Letter dated 10.07.1997 (Annexure P-4) is reads as follows:

State of Madhya Pradesh General Administrative Department

No. F-15(6)/96/1-10

Bhopal dated 10.07.1997

To

All member Secretary/Secretaries of the Government State of Madhya Pradesh
Bhopal

Sub. Sanction for prosecution against the Government Employees/Officers.

Ref.: Circular No. F-15(6)96/1-10 dated 21.04.1997 issued by this Department

Vide reference circular of this department, the procedure for according sanction for prosecution was determined.

As per order following part is deleted from the prescribed procedure in Para 2 of the said circular.

In case of conflict between the Law Department and the Administrative Department, the case shall be presented before the Sub-Committee of the Cabinet by the Administrative Department."

Remaining procedure of the reference circular shall remain as it is. Please ensure action in the cases of sanction for prosecution in future accordingly.

Sd/- A.V. Gwaliorkar Deputy Secretary State of MP General Administrative Department

No. F-15(6)/96/1-10 Bhopal dated 10.07.1997

Copy to

Officer on Special duty, Lokayukta Office, Madhya Pradesh Bhopal for information

Sd/- A.V. Gwaliorkar Deputy Secretary State of MP General Administrative Department.

10. By the Order dated 28.02.1998, the State Government further clarified that in the matters of sanction for prosecution, the papers shall be sent by the Department of Law and Legislative Affairs along the record to the Administrative Department for its opinion and the Administrative Department shall give the same within a period of one month, whereafter Department of Law and Legislative Affairs shall take a decision.

11. It is not disputed that State of Madhya Pradesh Economic Offence Wing registered Crime No. 28 of 2004 in respect of offences Under Sections 420, 467, 468, 471 and 120B Indian Penal Code and Under Section 13(1)(d) read with Section 13(2) Prevention of Corruption Act, 1988 against the Respondents on the allegation that the Respondents in connivance with others prepared forged note sheet, and made payment of Rs. 9,51,657/- to a contractor abusing their position. It is also not disputed that when the EOW sought sanction for prosecution from Department of Housing and Environment, it declined the sanction vide order dated 08.03.2011 (Annexure P-6). Question before us is that whether the Department of Law and Legislative Affairs which granted the sanction vide its order dated 20.11.2012 (Annexure P-8) was competent to do so or not.

12. The High Court in the impugned order observed that the (EOW) did not challenge legality and validity of order dated 08.03.2011, and submitted the

charge sheet. It further held that since the Appellant No. 2 was conferred power to grant the sanction only vide circular dated 28.02.1998, as such it was not competent to grant the sanction relating offences alleged to have been committed in the year 1997.

13. We are unable to accept the view taken by the High Court for the reason that from annexure P-1 and annexure P-2, it is evident that the power to grant the sanction for prosecution, already existed with the Department of Law and Legislative Affairs, since February, 1988. The circular letter dated 28.02.1998 (Annexure P-5) does not confer any new power and it only clarifies that Department of Law and Justice is a competent authority not only in respect of investigations made by Lokayukta Organization, but also the State Economic Offences Investigation Wing. The power with the Appellant No. 2 to grant the sanction is, in fact, conferred by the rule as amended vide notification dated 03.02.1988 published in the Official Gazette. After such amendment in the rule whereby power to grant sanction was delegated to Department of Law and Justice, it cannot said that Administrative Department had power to decline sanction as it has done vide its order dated 10.07.1997.

14. In D.D.A. and Others Vs. Joginder S. Monga and Others, (2003) 10 SCALE 70 : (2004) 2 SCC 297 : (2003) 6 SCR 786 Supp discussing the situation of conflict between statutory rule and executive instruction, this Court has clarified as under:

30. It is not a case where a conflict has arisen between a statute or a statutory rule on the one hand and an executive instruction, on the other. Only in a case where a conflict arises between a statute and an executive instruction, indisputably, the former will prevail over the latter. The lessor under the deed of lease is to fix the market value. It could do it area wise or plot wise. Once it does it area wise which being final and binding, it cannot resile therefrom at a later stage and take a stand that in a particular case it will fix the market value on the basis of the price disclosed in the agreement of sale.

15. On behalf of the Respondents, reliance is placed in the case of Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke(2015) 2 AD 129 : (2015) CriLJ 1259 : (2015) 1 Crimes 90 : (2015) 2 JCC 930 : (2015) 1 RCR(Criminal) 570 : (2015) 1 SCALE 457 : (2015) 3 SCC 123 : (2015) 2 SCJ 253 , but on going through said case law we find that in said case investigation agency itself filed closure report as against the Appellant Sanjaysinh Ramrao Chavan, and the same was accepted by the Magistrate, as such there was no question of sanction to be obtained from the Department concerned. In the circumstances, we find that the case of Sanjaysinh Ramrao Chavan (supra,) is of little help to the present Respondents.

16. Recently in State of Bihar and Ors. v. Rajmangal Ram (2014) 11 SCC 388, this Court has held as under:

9. In the instant cases the High Court had interdicted the criminal proceedings on

the ground that the Law Department was not the competent authority to accord sanction for the prosecution of the Respondents. Even assuming that the Law Department was not competent, it was still necessary for the High Court to reach the conclusion that a failure of justice has been occasioned....

17. From the sanction granted by the Law Department, copy of which is annexed as Annexure P-8, it is evident that the authority has examined the material on record before granting the sanction.

18. Therefore, we are of the view that the High Court has erred in law in allowing the Writ Petition filed by the Respondents seeking quashing of sanction dated 20.11.2012 granted by Appellant No. 2, Secretary, Department of Law and Legislative Affairs, Government of Madhya Pradesh. We do not find any infirmity as to the competence of Appellant No. 2 to grant the sanction in the matter for the reasons discussed above. Accordingly, the appeal is allowed. The impugned order dated 03.09.2013, passed by the High Court, is set aside.