
(2016) 04 JH CK 0082
In the Jharkhand High Court
Case No : W.P.(Cr.) No. 473 of 2015

Virerndra Pratap Dubey

APPELLANT

Vs

Jharkhand Urja Vikas Nigam Limied and another

RESPONDENT

Date of Decision : 12-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197

Citation : (2016) 162 AIC 558 : (2016) 4 AIRJharR 473 : (2016) 3 ECrC 186 : (2016) 3 JBCJ 216 : (2016) 2 JLJR 625

Hon'ble Judges : Ravi Nath Verma, J.

Bench : Single Bench

Advocate : Rajendra Krishna and Jai Shankar Tiwary, Advocates, for the Appellant; Suraj Verma, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ravi Nath Verma, J. (Cav) - The solitary question, which arises for consideration by this Court in this writ petition (Cr.), is as to whether the State or the State authority concerned-the Electricity Board has any power of review in the matter of grant of sanction in terms of Section 197 of the Code of Criminal Procedure, 1973 (in short "the Code").

2. The facts of the case, which is relevant for the purposes of consideration of the above question, in short, is that at the instance of the Secretary of the Jharkhand State Electricity Board, an F.I.R. was instituted on 20.01.2011 being Vigilance P.S. Case no. 02 of 2011 with the allegation that the Electrical Executive Engineer namely Sri P.K. Sinha, the Financial Controller namely Sri Umesh Kumar and other responsible officers posted in the Jharkhand State Electricity Board have misused their official position and have committed irregularities in APDRP Project under Package "D" for Jamshedpur vide work order no. 28/APDRP-64 and 29/APDRP-64 dated 27.01.2005. Accordingly, the F.I.R. was lodged under Sections 409, 420, 467, 468, 471, 477 and 120-B of the I.P.C. and also under Section 13(ii) read with Section 13(i)(c) and (d) of

Prevention of Corruption Act. The further allegation in the said F.I.R. was that Jharkhand State Electricity Board issued Notice Inviting Tender (TIN) for undertaking work under the Accelerated Power Development and Reforms Programme (in short "APDRP") under Package "D" for Jamshedpur town stipulating therein that the work would be required to be completed within time schedule and that the price quoted by the bidder shall not be subjected to variation on any account. Making it further clear that no escalation in prices shall be admissible on any account to the bidder. Same clauses were reiterated when the work orders were issued to M/s. Ramji Power Company Limited (in short M/s. RPCL) and even in the agreement entered into between the JSEB and M/s. RPCL, it was the part of the terms and conditions but as M/s. RPCL could not execute the work within the stipulated period i.e. before 26.09.2005, it was extended to 31.07.2007 without putting any clause for escalation of price but with imposition of liquidated damages. M/s. RPCL agreed to that proposal and assured that the work would be completed within the extended time and it will not be going for any arbitration. It is also alleged that when the said M/s. RPCL contrary to its promise did not even start the work by 31.07.2007, the then Chairman, JSEB directed the Chief Engineer, APDRP to put up an agenda for termination of contract of M/s. RPCL in the next meeting of the Board of JSEB. Accordingly, the Chief Engineer, APDRP put up the agenda before then Member (Technical), JSEB, who in connivance with the other accused, held back the concerned file till the transfer of the then Chairman, JSEB. It is also alleged that P.K. Sinha, the then Electrical Executive Engineer, APDRP, put notice in the file for appointment of Arbitrator and for waiver of penalty after having approval of the Chairman. Where after the Arbitrator was appointed, who after hearing the parties gave Award. Pursuant to that, payments were made to M/s. RPCL but when it was detected that grave financial irregularities have been committed in making payments to the said company by adopting malpractices. The officers conspired and never placed the said agenda rather P.K.Sinha, Electrical Executive Engineer, APDRP, placed the file for appointment of an Arbitrator, waiver of penalty and extension of time and the Arbitrator gave award in favour of M/s. RPCL. Pursuant to that, the Board had paid a sum of Rs. 10.87 Crores. The said Executive Engineer P.K.Sinha with malafide intention deliberately suppressed the fact that implementation of award will have financial impact of additional approximately Rs. 11 Crores and the amount was paid on the order of Financial Controller-III though he had no authority to pass the order for making the payment of more than Rs. 3 Crores rather the said authority was lying with the Member (Finance) or the Chairman, JSEB.

It is also alleged that the total cost of the Project was Rs.33.13 Crores and against that, the work done including the cost of materials were worth Rs. 19,85,08,406/- but the said Firm was paid Rs. 28,90,95,479/- and thereby a sum of Rs.9,05,87,073/- has been paid in excess.

3. After investigation, the charge-sheet was submitted against the accused persons including this petitioner, who was holding the post of Director (Finance)

at the relevant time and during his tenure, the payments were made to the said Company.

4. It appears from the record that a Public Interest Litigation bearing no. C.W.J.C. no. 1793 of 2001 was filed before this Court, which was heard along with W.P.(PIL)no. 4611 of 2009 and W.P.(PIL)no. 2918 of 2010 and by a common order dated 28.03.2011, the Court directed the C.B.I. to look into the affairs of Jharkhand State Electricity Board and other concerned officers of the State Government. The C.B.I. after making inquiry found that there has been no criminality as was envisaged in the order of the Hon'ble Court and has, therefore, not registered any criminal case in the matter. It further appears that in the Board meeting dated 18.07.2013, it was resolved by the Resolution no. 1135 that the case has to be examined by a committee of experts with respect to the action and intention and report should be prepared and brought before the Board for decision regarding sanction of prosecution against the accused persons of Vigilance case no. 02 of 2011 in the instant case.

After the said resolution of the Board, a committee of experts was constituted by J.S.E.B. and the said committee after examining the entire affairs submitted its report vide letter dated 24.08.2013 in which it was observed that the action of the petitioner does not appear to be wrong. Accepting the report of experts' committee, the Board in its meeting dated 19.06.2014 refused to grant prosecution sanction against this petitioner (Annexure-15) but subsequently in the next meeting dated 05.08.2014, on the request of Vigilance Commissioner, the Board decided to grant sanction for prosecution against all the accused persons including this petitioner (Annexure-16) except one Sanjeev Kumar. Subsequent to the resolution of the Board granting sanction for prosecution against this petitioner, the letter dated 19.05.2015 (Annexure-22) was issued by the General Manager (Personnel) cum-General Administration showing grant of sanction against this petitioner and two other co-accused persons namely Umesh Kumar and Devashish Mahapatra as indicated above.

5. Learned counsel appearing for the petitioner assailing the grant of sanction as arbitrary and bad in law and without application of mind seriously contended that when sanction was refused by the Board in the earlier resolution, the review of the same by the authority without any fresh material and without assigning any cogent reason is wholly illegal and without jurisdiction. It was also submitted that sanction has been accorded on the dictates of the Vigilance bureau on his representation though on the same material, the Board had earlier refused to grant sanction and since the subsequent order granting sanction is a mechanical one, would cause injustice to the petitioner and amount to travesty of justice. Learned counsel further seriously contended that there was no fresh material before the Board for reconsideration or review of the earlier resolution and in support of his contention, learned counsel has relied on a judgment passed in the case State of Himanchal Pradesh. v. Nishant Sareen as reported in (2010) 14 SCC 527. It was also contended that a change of opinion per se on the same

materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction.

6. Contrary to the above submissions, the learned counsel appearing for the Board submitted that the jurisdiction for grant of sanction being an administrative one, the State or its authority i.e. Board has the requisite power to review its earlier order but fairly submitted that from the second resolution by which sanction was accorded, there appears to be no fresh material.

7. Before I enter into the veils of submissions of the learned counsels, it would be pertinent to examine the object underlying the grant of sanction as provided under Section 197 of the Code. The very object behind under Section 197 of the Code is to ensure that a public servant does not suffer harassment on false, frivolous, concocted or unsubstantiated allegations. The petitioner at the relevant time was the Director (Finance) and he is, therefore, not removable from his office save by and with the sanction of the Government or proper authority. In that view of the matter, if the petitioner is an accused in any offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty, grant of prior sanction is imperative in character in terms of Section 197 of the Code. In the case *Mansukhlal Vithaldas Chauhan v. State of Gujarat*; (1997) SCC 622, the Hon"ble Supreme Court observed in paragraph-17 as follows:-

"17. ???Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for guilty."

8. Section 197 of the Code does not make any express provision regarding review or reconsideration of the matter by the sanctioning authority once such power has been exercised. In the *State of Punjab and another v. Mohammed Iqbal Bhatti*; (2009) 17 SCC 92, the Hon"ble Supreme Court while considering the similar issue observed in paragraphs 6, 7 and 9 as follows:-

"6. Although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction, the same, however, would not mean that power once exercised cannot be exercised once again.

For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. It is, however, beyond any cavil that while passing an order for grant of sanction, serious application of mind on the part of the authority concerned is imperative. The legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the superior courts.

7. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidence must be considered by it. The sanctioning

authority must apply its mind on such material facts and evidence collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidence may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. It is also well settled that the superior courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered. The authority concerned cannot also pass an order of sanction subject to ratification of a higher authority.

8. In the aforementioned situation, the High Court, opined:

"Once the Government passes the order under Section 19 of the Act or under Section 197 of the Code of Criminal Procedure, declining the sanction to prosecute the official concerned, reviewing such an order on the basis of the same material, which already stood considered, would not be appropriate or permissible. The Government is expected to act consciously and cautiously while taking such serious decisions. The perusal of the record shows that pointed queries had been raised to be answered by the Vigilance Bureau but no answer was forthcoming nor any had been submitted subsequently which culminated into passing of the later order dated 30.09.2004. We refrain ourselves from mentioning the queries which had been raised but it would suffice to say that the queries were never answered at the relevant time when the order dated 15.12.2003 had been passed nor was the same ever commented upon as no answers were placed before the competent authority for passing the impugned order dated 30.09.2004."

9. Undoubtedly, the State or its authority exercising its jurisdiction has a power of review but only when there is fresh material for reconsideration.

10. Similar question was considered by the Hon"ble Supreme Court in the State of Himanchal Pradesh v. Nishant Sareen (supra) and the Hon"ble Supreme Court in paragraph nos.- 12 and 13 has held as follows:

"12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us a sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority

for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise.

13. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such a course."

11. In the instant case, nothing has been brought on record at the instance of the respondent-Jharkhand Urja Vikas Nigam Limited, which is part of earlier J.S.E.B., to show that any fresh material was collected by the investigating agency so as to place the matter before the meeting of the Board for reconsideration and/or for review of the earlier order refusing to grant sanction rather from the subsequent resolution of the Board, which is kept at Annexure-16 of the writ petition, it is clear that on the same materials, the sanctioning authority without applying its mind in a mechanical way granted sanction to prosecute the petitioner. Even in the counter affidavit filed at the instance of the Board, there is no whisper or any specific denial about placing any fresh material before the authority for reviewing the earlier order. There is also nothing on the record or placed by the respondent to show as to why the consideration became necessary. Application of mind is also absent to show the necessity for re-consideration or review of the earlier order on the basis of the same materials before the sanctioning authority.

12. In view of the discussions made above, grant of sanction by the respondent authorities calls for interference in exercise of writ jurisdiction.

13. The Writ Petition (Cr.) is allowed and the order granting sanction for prosecution dated 19.05.2015 by the respondent authorities is, hereby, quashed.